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ABSTRACT

This publication provides a compilation of Texas statutes relating to libraries and topics of interest to librarians through the 74th Legislature, 1995. In addition to laws in which the words "library," "books," "Texas State Library," "Library and Archives Commission," and "director and librarian" appear in any form, this update to the 1991 edition contains legislation of interest to the library community on such topics as discrimination, intergovernmental cooperation, liability of public employees, obscenity, open records, public buildings, financing, and more. Legislation information is organized into the following broad categories: Civil Statutes; Civil Practice and Remedies Code; Education Code; Election Code; Government Code; Health and Safety Code; Human Resources Code; Insurance Code; Labor Code; Local Government Code; Penal Code; Property Code; Tax Code; and Miscellaneous. Concurrent resolutions of the legislature and a summary of Texas Attorney General Opinions relating to libraries and public records close the publication. (SWC)

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# Library Laws of Texas 1997

A compilation through the 74th Legislature, 1995

Texas State Library and Archives Commission
Library Development Division
Austin, Texas
1997

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# LIBRARY OF THE REPUBLIC OF TEXAS
# 1839

## Joint Resolution

*Making an appropriation for the purchase of a Library for the Republic of Texas.*

Resolved by the Senate and House of Representatives of the Republic of Texas in Congress assembled, That the sum of ten thousand dollars be, and the same is hereby appropriated for the purpose of purchasing a Library for the use of the Government of Texas, and the Secretary of the Treasury is hereby required to issue the promissory notes of the Government to that amount; and the President is hereby authorized to draw for the same, and to purchase such books as in his judgement and circumstances most require; and said books shall be deposited in the office of the Secretary of State.

Approved, 24th January 1839
/s/ **MIRABEAU B. LAMAR**

/s/ **JOHN M. HANSFORD**
Speaker of the House of Representatives

/s/ **DAVID G. BURNET**
President of the Senate

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# PREFACE

*Purpose*

This new edition of Library Laws of Texas is published to provide a handy compilation of Texas statutes relating to libraries and topics of interest to librarians through the 74th Legislature, 1995. The last edition was published in 1991.

*Scope*

An effort has been made to include laws in which the words "library", "books", "Texas State Library", "Library and Archives Commission", and "director and librarian" appear in whatever form. In addition, the user will find legislation of interest to the library community on such topics as discrimination, intergovernmental cooperation, liability of public employees, obscenity, open records, public buildings and financing, etc. Concurrent resolutions of the legislature and a summary of Texas Attorney General Opinions relating to libraries and public records close the publication. For more detailed information on records management, please contact the State and Local Records Management Division of the Texas State Library.

*Editing*

Lengthy statutes or those containing provisions lacking relevance to libraries are not fully reproduced. Omissions of one or more sections, subsections, or paragraphs will be marked by the addition of asterisks (****), or with an elision (...) to show omissions within a paragraph. However, the reader should be aware that asterisks are not used to show text omitted prior to the first section or article quoted, as it is easy to determine that legislation beginning with section number 5 has had the first four sections omitted. Information added by the editor is enclosed within brackets ([ ]). The reader should always consult the full text to help determine if those portions omitted apply to the specific situation at hand.

*Recodification*

The Texas State Legislature has charged the Texas Legislative Council with the task of revising older statutes without changing their meaning or intent. As described by the Council "the process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable--all toward promoting the stated purpose of making the statutes 'more accessible, understandable and usable' without altering the sense, meaning, or effect of the law."

While the Council is busy with its task, the Legislature adds new laws and repeals or amends existing legislation. That is why in this compilation you might discover that a familiar statute has been replace by a new one or the topic divided among several statutes. Since the recodification process is on-going not all older statutes have been revised and relocated. That is why the first chapter of this compilation, Civil Statutes, contains laws in the older style format and on a variety of topics.

*Legislative history*

When the information was readily available, section notations were added within brackets to show the original date a statute was added and the date it was last amended. For example: [71st Leg., 1989; Amended 74th Leg., 1995] means that the act was added in 1989 by the 71st Legislature and last amended in 1995 by the 74th Legislature. The notation does not reference any repealed law which might have preceded the current act. While this publication is current as of the Regular Legislative Session of 1995, the notations are provided as an additional aid to the reader.

*Citations -*

The full text of all statutes in this publication may be found by consulting Vernon's Annotated Civil Statutes (VACS) or Vernon's Texas Codes Annotated (VTCA).

*Responses*

We welcome assistance in keeping this publication up-to-date and complete. Please forward your comments, suggestions, and citations of statutes to recommended for inclusion in the next edition to the below address.

*Disclaimer*

The information provided is not intended as nor should it be used as a substitute for legal advise. Before acting on any of the topics presented, the reader should consult an attorney.

Library Development Division
Texas State Library

Title 22. **BONDS COUNTY, MUNICIPAL, ETC.**
Chapter 7. **MUNICIPAL BONDS.**
Art. 835m. **Municipal Libraries; Fire Stations; Validation Of Bonds.** [53rd Leg., 1953]

Sec 1. All bonds heretofore voted by any incorporated city or town, including home rule cities, for the purpose of enlarging and improving a municipally owned and operated library building or constructing a new municipal library building, either or both, and all proceedings relating thereto, are hereby in all things validated, ratified, approved, and confirmed, notwithstanding the fact that the election may not in all respects have been ordered and held in accordance with mandatory statutory provisions.... Such bonds, when approved by the Attorney-General of Texas and registered by the Comptroller of Public Accounts of Texas, and sold and delivered for not less than their par value plus accrued interest, shall be binding, legal, valid, and enforceable obligations of such city or town and shall be incontestable. Provided, however, that this Act shall apply only to such bonds which were authorized at an election or elections wherein a majority of the qualified property taxpaying voters whose property had been duly rendered for taxation voted in favor of the issuance thereof.

Sec 2. This Act shall not be construed as validating any such bonds or proceedings, the validity of which has been contested or attacked in any suit or litigation pending at the time this Act becomes effective.

Title 28. **CITIES, TOWNS AND VILLAGES.**
Chapter 20. **MISCELLANEOUS PROVISIONS.**
Art. 1269j-4.1. **Public Improvements In City, Town Or Village; Bonds; Occupancy Tax.** [59th Leg., 1965; Amended 73rd Leg., 1993]

Sec. 1. **Applicability of Act.**
In this Act, "city" means a home-rule city or a city, town, or village incorporated under general law.

Sec. 2. **Buildings, Structures, Parking Areas and Facilities; Leases.**
(a) Any such city is hereby authorized to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate or maintain (any or all) public improvements such as civic centers, civic center buildings, auditoriums, opera houses, music halls, exhibition halls, coliseums, museums, libraries, or other city buildings (either or all), and golf courses, tennis courts, and other similar recreational facilities, and to establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate or maintain (any or all) structures, parking areas, or facilities, located at or in the immediate vicinity of such public improvements, to be used in connection with such public improvements for off-street parking or storage of motor vehicles or other conveyances; and provided that any such lease shall be on such terms and conditions as said city shall deem appropriate.
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Sec. 3. **Revenue Bonds; Ordinance; Pledge of Revenues; Charges for Services; Leases.**
(a) Any such city is hereby authorized to issue negotiable revenue bonds to provide all or part of the funds for the establishment, acquisition, purchase, construction, improvement, enlargement, equipment or repair (any or all) of public improvements such as civic centers, civic center buildings, auditoriums, opera houses, music halls, exhibition halls, coliseums, museums, libraries or other city buildings, either or all, and golf courses, tennis courts, and other similar recreational facilities, and the establishment, acquisition, purchase, construction, improvement, enlargement, equipment or repair (any or all) of structures, parking areas or facilities, located at or in the immediate vicinity of such public improvements, to be used in connection with such public improvements for off-street parking or storage of motor vehicles or other conveyances.
(b) Such revenue bonds may be issued when duly authorized by an ordinance passed by the governing body of such city and shall be secured by a pledge of and be payable from all or any designated part of the revenues of said public improvements or said parking or storage facilities, as may be provided in the ordinance or ordinances authorizing the issuance of such bonds. To the extent that such revenues may have been pledged to the payment of revenue or revenue refunding bonds which are still outstanding, the pledge securing the proposed bonds shall be inferior to the previous pledge or pledges. Within the discretion of the governing body of the city, and subject to limitations contained in previous pledges, if any, in addition to the pledge of revenues a lien may be given on all or any part of the physical properties acquired out of the proceeds from the sale of such bonds.
(c) When any of the revenues of such public improvements and facilities are pledged to the payment of bonds issued under this Act, it shall be the duty of the governing body of the city to cause to be fixed, maintained and enforced charges for services rendered by properties and facilities, the revenues of which have been pledged, at rates and amounts at least sufficient to comply with and carry out the covenants, and provisions contained in the ordinance or ordinances authorizing the issuance of said bonds.

(d) If any such city leases as lessee any one or more such public improvements, structures, parking areas or facilities, such city shall have authority to pledge to the lease payments required to be made by such city all or any part of the revenues of such public improvements, structures, parking areas or facilities.
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Sec. 4. **Payment of Principal or Interest on Bonds.**

The owners or holders of such revenue or revenue refunding bonds shall never have the right to demand payment of either the principal of or interest on such bonds out of any funds raised or to be raised by taxation, except as to room taxes, if pledged.
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Art. 1269j-9. **Validation of Proceedings for Public Improvements on Civic Centers, etc.** [61st Leg., 1969]

Sec. 1. All proceedings, including all revenue bonds and all provisions, pledges, security, and other terms thereof, and the terms and conditions of the sale of such bonds; and all contracts, agreements, leases, operating agreements, options, and all other agreements and proceedings; taken, had, made, entered into or executed by the governing bodies of all cities and towns, including home rule cities, in the State of Texas, in connection with the establishment, acquisition, purchase, construction, improvement, operation, maintenance, and/or use of public improvements authorized by and described in Chapter 63, page 148, Acts of 1965, 59th Legislature, Regular Session, as amended by Chapter 563, page 1239, Acts of 1967, 60th Legislature, Regular Session (compiled, as amended, as Article 1269j-4.1, Vernon's Annotated Civil Statutes), are in all things hereby fully validated, confirmed, approved and ratified.
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Sec. 2. All orders, resolutions, ordinances, indentures, and other actions authorizing the issuance of or securing any such revenue bonds, and the sale thereof, and the other agreements and proceedings validated in Section 1 hereof are themselves hereby in all things validated, confirmed, approved, and ratified.
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Title 32. **CORPORATIONS.**
Chapter 9. **NON-PROFIT, COOPERATIVE, RELIGIOUS AND CHARITABLE.**
1. **Texas Non-Profit Corporation Act.**

Art. 1396-2.01. **Purposes.** [56th Leg., 1959; Amended 71st Leg., 1989]

A. Except as hereinafter in this Article expressly excluded herefrom, non-profit corporations may be organized under this Act for any lawful purpose or purposes, which purposes shall be fully stated in the articles of incorporation. Such purpose or purposes may include, without being limited to, any one or more of the following: charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural; and the conduct of professional, commercial, industrial, or trade associations; and animal husbandry. Subject to the provisions of Chapter 2, Title 83, of the Revised Civil Statutes of Texas, 1925, and of such Chapter or any part thereof as it may hereafter be amended, a corporation may be organized under this Act if any one or more of its purposes for the conduct of its affairs in this State is to organize laborers, working men, or wage earners to protect themselves in their various pursuits.
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Art. 1396-2.02. **General Powers.** [56th Leg., 1959; Amended 71st Leg., 1989]

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before August 10, 1959, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(6) To lend money to, and otherwise assist its employees and officers, but not its directors, if the loan or assistance may reasonably be expected to benefit, directly or indirectly, the corporation providing the assistance. Loans made to officers must be:

(a) made for the purpose of financing the principal residence of the officer, or

(b) made during the first year of that officer's employment, in which case the original principal amount may not exceed 100 percent of the officer's annual salary; or

(c) made in any subsequent year, in which case the original principal amount may not exceed 50 percent of the officer's annual salary.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and

deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(16) An religious, charitable, educational, or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which maybe expressly set forth in this Act or in the articles of incorporation or by-laws or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this Article.

C. Nothing in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925, as now existing or hereafter amended.

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Art. 1396-2.04. **Corporate Name.** [56th Leg., 1959; Amended 72nd Leg., 1991]

A. The corporate name shall conform to the following requirements:

(1) It shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) It shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, existing under the laws of this State, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided by the Texas Business Corporation Act, or the name of a corporation which has in effect a registration of its corporate name as provided in the Texas Business Corporation Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar, or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State.

(3) It shall not contain the word "lottery."

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Art. 1396-2.05. **Registered Office and Registered Agent.** [56th Leg., 1959; Amended 73rd Leg., 1993]

Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this State which has a business office identical with such registered office.

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Art. 1396-2.08. **Members.** [56th Leg., 1959; Amended 57th Leg., 1961]

A. A corporation may have one or more classes of members or may have no members.

B. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or by-laws.

C. If the corporation is to have no members, that fact shall be set forth in the articles of incorporation.

D. A corporation may issue certificates, or cards, or other instruments evidencing membership rights, voting rights or ownership rights as may be authorized in the articles of incorporation or in the by-laws.

E. The members of a non-profit corporation shall not be personally liable for the debts, liabilities, or obligations of the corporation.

Art. 1396-2.09. **By-Laws.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members, by the members. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

B. A corporation's board of directors may amend or repeal the corporation's by-laws, or adopt new by-laws, unless:

(1) the articles of incorporation or this Act reserves the power exclusively to the members in whole or in part;

(2) the management of the corporation is vested in its members; or

(3) the members in amending, repealing, or adopting a particular by-law expressly provide that the board of directors may not amend or repeal that by-law.

Art. 1396-2.10. **Meetings Of Members.** [56th Leg., 1959]

A. If a corporation has members:

(1) Meetings of members shall be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

(2) An annual meeting of the members shall be held at such times as may be provided in the by-laws, except that where the by-laws of a corporation provide for more than one regular meeting of members each year, an annual meeting shall not be required, and directors may be elected at such meetings as the by-laws may provide. Failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation. In the event the board of directors fails to call the annual meeting at the designated time, any member may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directed to any officer of the corporation. If the annual meeting of members is not called within sixty (60) days following such demand, any member may compel the holding of such annual meeting by legal action directed against said board, and all of the extraordinary writs of common law and of courts of equity shall be available to such member to compel the holding of such annual meeting. Each and every member is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings.

(3) Special meetings of the members may be called by the president, the board of directors, by members having not less than one-tenth (1/10) of the votes entitled to be cast at such meeting, or such other officers or persons as may be provided in the articles of incorporation or by-laws.

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Art. 1396-2.14. **Board of Directors or Trustees.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

B. Boards of directors of religious, charitable, educational, or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another state, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association.

C. The articles of incorporation of a corporation may vest the management of the affairs of the corporation in its members. If the corporation has a board of directors, it may limit the authority of the board of directors to whatever extent as may be set forth in the articles of incorporation or by-laws. Except for a church organized and operating under a congregational system, was incorporated before January 1, 1994, and has the management of its affairs vested in its members, a corporation shall be deemed to have vested the management of the affairs of the corporation in its board of directors in the absence of an express provision to the contrary in the articles of incorporation or the by-laws.

D. The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation.

E. The board of directors of a corporation may be elected (in whole or in part) by one or more associations or corporations, organized under the laws of this State or another state if (1) the articles of incorporation or the bylaws of the former corporation so provide, and (2) the former corporation has no members with voting rights.

F. The articles of incorporation or the by-laws may provide that any one or more persons may be ex-officio members of the board of directors. A person designated as an ex-officio member of the board of directors is entitled to notice of and to attend meetings of the board of directors. The ex-officio member is not entitled to vote unless otherwise provided in the articles of incorporation or the by-laws. An ex-officio member of the board of directors who is not entitled to vote does not have the duties or liabilities of a director as provided in this Act.

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Art. 1396-2.20. **Officers.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. The officers of a corporation shall consist of a president and a secretary and may also consist of one or more vice-presidents, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors, or, if the management of the corporation is vested in its members, by the members. Any two or more offices may be held by the same person, except the offices of president and secretary. A committee duly designated may perform the functions of any officer and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

B. The officers of a corporation may be designated by such other or additional titles as may be provided in the articles of incorporation or the by-laws.

C. In the case of a corporation which is a church, it shall not be necessary that there be officers as provided herein, but such duties and responsibilities may be vested in the board of directors or other designated body in any manner provided for in the articles of incorporation or the by-laws.

D. In the discharge of a duty imposed or power conferred on an officer of a corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person, that were prepared or presented by:

(1) one or more other officers or employees of the corporation, including members of the board of directors;

(2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance or confidence and whom the officer believes to be reliable and competent in the matters presented.

E. An officer is not relying in good faith as required by Section D of this article if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Section D of this article unwarranted.

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Art. 1396-2.23. **Books and Records.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors and shall keep at its registered office or principal office in this. State a record of the names and addresses of its members entitled to vote.

B. A member of a corporation, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the corporation relevant to that purpose, at the expense of the member.

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Art. 1396-2.24. **Dividends Prohibited.** [56th Leg., 1959]

A. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members, but only as permitted by this Act.

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Art. 1396-3.01. **Incorporators.** [56th Leg., 1959; Amended 70th Leg., 1987]

A. Any natural person of the age of eighteen (18) years or more without regard to the person's place of residence or domicile may act as an incorporator of a corporation by signing the articles of incorporation for such corporation and delivering the original and a copy of the articles of incorporation to the Secretary of State.

B. Any religious society, charitable, benevolent, literary, or social association, or church may incorporate under this Act with the consent of a majority of its members, who shall authorize the incorporators to execute the articles of incorporation.

Art. 1396-3.02. **Articles of Incorporation.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. The articles of incorporation shall set forth:

(1) The name of the corporation.

(2) A statement that the corporation is a non-profit corporation.

(3) The period of duration, which may be perpetual.

(4) The purpose or purposes for which the corporation is organized.

(5) If the corporation is to have no members, a statement to that effect.

(6) If management of the affairs of the corporation is to be vested in its members, a statement to that effect.

(7) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(8) The street address of its initial registered office and the name of its initial registered agent at such street address.

(9) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors unless the management of

the corporation is vested in its members, in which event a statement to that effect shall be set forth.

(10) The name and street or post office address of each incorporator.

(11) If the corporation is to be authorized on its dissolution to distribute its assets in a manner other than as provided by Article 6.02(3) of this Act, a statement describing the manner of distribution of the corporation's assets.

B. Provided that charters or articles of incorporation of corporations existing on the effective date of this Act which do not contain one or more of the requirements listed in the foregoing Section need not be amended for the purpose of meeting such requirements. Any subsequent amendment or restatement of the articles of incorporation of such corporation shall include such requirements, except that it shall not be necessary, in such amended or restated articles, to include the information required in Subsections (8), (9), and (10) of Section A.

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

D. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

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Art. 1396-3.03. **Filing of Articles of Incorporation.** [56th Leg., 1959; Amended 66th Leg., 1979]

A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State shall be delivered to the incorporators or their representatives.

Art. 1396-3.04. **Effect of Issuance of Certificate of Incorporation.**

A. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the corporation has been incorporated under this Act, except as against the State in a proceeding for involuntary dissolution.

Art. 1396-3.05. **Organization Meeting.** [56th Leg., 1959; Amended 73rd Leg., 1993]

A. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of the incorporators or the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting by-laws, electing officers, and for such other purposes as may come before the meeting. The incorporators or directors calling the meeting shall give at least three (3) days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three(3) days' notice, for such purposes as shall be stated in the notice of the meeting.

C. If the management of a corporation is vested in its members, the organization meeting shall be held by the members upon the call of any of the incorporators. The incorporators calling the meeting shall (a) give at least three (3) days' notice by mail to each members stating the time and place of the meeting, or shall (b) make an oral announcement of the time and place of the meeting at a regularly scheduled worship service prior to such meeting if the corporation is a church, or shall (c) give such notice of the meeting as may be provided for in the articles of incorporation.

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Art. 1396-6.01. **Voluntary Dissolution.** [56th Leg., 1959]

A. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the resolution shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporations is vested in the members pursuant to Article 2.14C of this Act, a resolution that the corporation be dissolved shall be submitted to a vote at a meeting of members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to the members, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of and claimant against the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

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Chapter 10. **PUBLIC UTILITIES.**
8. **MISCELLANEOUS PROVISIONS.**
Art. 1446c-0. **Public Utility Regulatory Act of 1995.**
Title III. **Telecommunications Utilities.**
Subtitle N. **Telecommunications Service Assistance Program; Universal Service Fund.**
Sec. 3.605. **Distance Learning Activities by Educational Institutions and Information Sharing Programs by Libraries; Reduced Rates.** [74th Leg., 1995]

(a) The commission by rule shall require a dominant carrier to file a tariff containing a reduced rate for a telecommunications service the commission finds is directly related to a distance learning activity that is or could be conducted by an educational institution in this state or an information sharing program that is or could be conducted by a library in this state.

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(d) The services and reduced rates shall be designed to:

(1) encourage the development and offering of distance learning activities by educational institutions or information sharing programs of libraries;

(2) meet the distance learning needs identified by the educational community and the information sharing needs identified by libraries; and

(3) recover the long-run incremental costs of providing the services, to the extent those costs can be identified, so as to avoid subsidizing educational institutions or libraries.

(e) The commission is not required to determine the long-run incremental cost of providing a service before approving a reduced rate for the service. Until cost determination rules are developed and the rates established under this section are changed as necessary to ensure proper cost recovery, the reduced rates established by the commission shall be equal to 75 percent of the otherwise applicable rate. After the commission develops cost determination rules for telecommunications services generally, it shall ensure that a reduced rate approved under this section recovers service-specific long-run incremental costs and avoids subsidization.

(f) An educational institution, library, or dominant carrier may at any time request the commission to:

(1) provide for a reduced rate for a service directly related to a distance learning activity or an information sharing program that is not covered by commission rules;

(2) change a rate;

(3) amend a tariff; or

(4) amend a commission rule.

(g) If the commission determines that a change requested under Subsection (f) is appropriate, it shall make the requested change.

(h) In this section:

(1) "Distance learning" means instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(2) "Educational institution" means and includes:

(A) accredited primary or secondary schools owned or operated by state and local governmental entities or private entities;

(B) institutions of higher education as defined by Section 61.003, Education Code;

(C) private institutions of higher education accredited by a recognized accrediting agency as defined by Section 61.003(13), Education Code;

(D) the Texas Education Agency, its successors and assigns;

(E) regional education service centers established and operated pursuant to Chapter 8, Education Code; and

(F) the Texas Higher Education Coordinating Board, its successors and assigns.

(3) "Library" means a "public library" or "regional library system" as those terms are defined by Section 441.122, Government Code, or a library operated by an institution of higher education or a school district.

Sec. 3.606. **Telecommunications Infrastructure Fund.** [74th Leg., 1995]

(a) In this section:

(1) "Board" means the Telecommunications Infrastructure Fund Board.

(2) "Fund" means the telecommunications infrastructure fund.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code, and also includes a "private or independent institution of higher education" as defined by Section 61.003, Education Code.

(4) "Library" means a "public library", or "regional library system" as those terms are defined by Section

441.122, Government Code, or a library operated by an institution of higher education or a school district.

(5) "School district" has the meaning assigned by Section 19.001, Education Code.

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(b) ...it is the policy of this state that commercial mobile service providers contribute an appropriate amount to the telecommunications infrastructure fund.

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(d) The governor and the lieutenant governor, in making their appointments to the board, and the speaker of the house of representatives, in compiling the list of recommended persons, shall attempt to select members who are representative of, but not limited to, urban and rural school districts, institutions of higher education, libraries, and the public....

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(g) The board is authorized to employ any personnel as reasonable necessary to perform duties delegated by the board, and the board may also enter into contracts as are necessary with state agencies or private entities to perform its duties.

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(j) The fund is composed of the telecommunications utilities account and the commercial mobile service providers account. The telecommunications utilities account is financed by an annual assessment on all telecommunications utilities doing business in this state.

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(k) The commercial mobile service providers account is financed by an annual assessment on all commercial mobile service providers doing business in this state....

(l) For the fiscal year beginning September 1, 1995, and for the nine fiscal years immediately following that year, for a total of 10 years, the comptroller shall assess and collect a total annual amount of $75 million from telecommunications utilities and a total annual amount of $75 million from commercial mobile service providers. The amounts assessed against both the telecommunications utilities and the commercial mobile service providers shall be assessed and collected in each year without respect to whether all of the funds previously collected an deposited in either or both accounts have been disbursed or spent due to lack of demand or otherwise.

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(q) The board shall use money in the telecommunications utilities account to award grants and loans in accordance with this section to fund equipment purchases, including computers, printers, computer labs, and video equipment, for public schools and for intracampus and intercampus wiring to enable those public schools to use the equipment. The board shall use money in the commercial mobile service providers account for any purpose authorized by this section, including equipment purchases, wiring, material, program development, training, installation costs, or any statewide telecommunications network.

(r) Subject to the limitations prescribed by Subsection (q) of this section, the board may award grants to projects and proposals that:

(1) provide equipment and infrastructure needed for distance learning, information sharing programs of libraries, and telemedicine services;

(2) develop and implement the initial or prototypical delivery of courses and other distance learning material;

(3) train teachers, faculty, librarians, or technicians in the use of distance learning or information sharing materials and equipment;

(4) develop curricula and instructional material especially suited for delivery by telecommunications;

(5) provide electronic information; or

(6) establish or carry out information sharing programs.

(s) Subject to the limitations prescribed by Subsection q) of this section, the board may award loans to projects and proposals to acquire equipment needed for distance learning and telemedicine projects.

(t) In awarding grants and loans in accordance with this section, the board shall give priority to projects and proposals that:

(1) represent collaborative efforts involving multiple schools, universities, or libraries;

(2) contribute matching funds from other sources;

(3) show promise of becoming self-sustaining;

(4) help users of information learn new ways to acquire and use information through telecommunications;

(5) extend specific educational information and knowledge services to groups not previously served, especially those in rural and remote areas;

(6) result in more efficient or effective learning than through conventional teaching;

(7) improve the effectiveness and efficiency of health care delivery; or

(8) take advantage of distance learning opportunities in rural and urban school districts with disproportionate numbers of at-risk youths or with high dropout rates.

(u) The Texas Higher Education Coordinating Board, the Central Education Agency, and the Texas State Library and Archives Commission shall adopt policies and procedures in consultation with the board that are designed to aid the board in achieving the purposes of this section.

(v) In distributing funds to public schools, the board shall take into account, the relative property wealth per student of the recipient school districts and recognize the unique needs of rural communities.

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Title 35 **COUNTY LIBRARIES.**
1. **County Free Libraries.**
Art. 1696a. **Acquisition of Land; Construction, Repair, Equipment and Improvement of Buildings; Bond Issues; Taxes.** [54th Leg., 1955]

Sec. 1. The Commissioners Court of any county in this State is hereby authorized to acquire land for and to purchase, construct, repair, equip and improve buildings, and other permanent improvements to be used for county library purposes. Such building or buildings and other permanent improvements may be located in the county at such place or places as the Commissioners Court may determine. Payment for such buildings and repairs and improvements and other permanent improvements shall be made from the Constitutional Permanent Improvement Fund.

Sec. 2 To pay the costs of acquiring land for and of purchasing, constructing, repairing, equipping and improving such buildings and other permanent improvements, the Commissioners Court is hereby authorized to issue negotiable bonds of the county and to levy and collect taxes in payment thereof, the issuance of such bonds and the levy and collection of taxes to be in accordance with the provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, governing the issuance of bonds by cities, towns, and/or counties in this State.

Art. 1696b. **Issuance of Bonds for Public Library.** [68th Leg., 1983]

Sec. 1. **Issuance of Bonds.**
The commissioners court of a county by order may authorize the issuance and sale of negotiable bonds in the name of the county to finance in whole or part the purchase or acquisition by any other method, construction, improvement, enlargement, equipment, or repair of a public library building.

Sec. 2 **Manner of Repayment of Bonds.**
(a) The commissioners court shall provide for the payment of the principal of and interest on the bonds by pledging all or any part of designated revenues from the operation of the library building or from the lease of space in the building.
(b) The commissioners court shall charge rent for the lease of space in the library building and shall establish fees in connection with the operation of the building to provide sufficient revenue to pay all expenses related to the ownership and operation of the building, including the expense of paying the principal of and interest on the bonds and the expense of creating and maintaining any required bond reserve funds.
(c) The owners of the bonds do not have any right to demand payment of the principal of and interest on the bonds out of any funds raised by taxation.
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Art. 1696c. **Print Access Aids for Visually Disabled Persons.**

Sec. 1. **Definitions.** [73rd Leg., 1993]
In this Act:
(1) "Print access aid" means an item, piece of equipment, or product system that improves or facilitates access to standard print by enlarging or magnifying print, or by electronically converting print to spoken, recorded, or tactile format.
(2) "Public library" has the meaning assigned by Section 441.122, Government Code, and its subsequent amendments.
(3) "Standard print" means text that appears on paper, microfilm, microfiche, or other microformat, or in machine-readable form, in a type size smaller than 14 points.
(4) "State Library" means the Texas State Library.

Sec. 2. **Print Access Aids in Public Libraries.** [73rd Leg., 1993]
(a) A public library may, to make its services and collections more accessible, make a print access aid available for use by a person who cannot clearly read printed material because of a visual disability.
(b) If funds from gifts or grants are available for that purpose, the state library may acquire and lend at no cost print access aids to public libraries.
(c) To be eligible to receive a print access aid under Subsection (b) of this section, there must be a community need for the aid.

Sec. 3. **Training and Information.** [73rd Leg., 1993]
The state library may provide to a library requesting or receiving a print access aid under this Act technical assistance, including assistance in:
(1) explaining to library employees the function of a print access aid;
(2) assessing local needs for use of a print access aid;
(3) providing to library employees training and information in the use of a print access aid;
(4) preparing and distributing public information regarding the availability and location of a print access aid; and
(5) providing assistance in developing policies and guidelines for use of an aid.

Sec. 4. **Maintenance of Equipment.** [73rd Leg., 1993]
The state library may pay the maintenance or repair cost of a print access aid supplied to a library under this Act out of funds available to the library from gifts or grants for that purpose. If the state library cannot pay the maintenance or repair cost of an aid, the library receiving the aid may pay the maintenance or repair cost or return the aid to the state library.

Sec. 5. **Relocation.** [73rd Leg., 1993]

The state library shall review each library that receives a print access aid under this Act once every two years to determine whether to relocate an aid provided to that library. The state library shall make a relocation decision based on population shifts, the use of equipment, and community need.

Sec. 6. **Funding.** [73rd Leg., 1993]

(a) The requirements of this Act for the provision and placement of print access aids by the state library are contingent on the receipt of gifts or grants for the state library to purchase, maintain, and repair the print access aids. If the state library's funds are not sufficient to place and maintain a print access aid in a library that may need an aid, the state library shall make a placement decision for any available aid based on demonstrated community need and local support provided by a library.

(b) Money from the general revenue fund may not be appropriated to implement this Act.

Title 71. **HEALTH — PUBLIC.**
Chapter 6. **MEDICINE.**
Art. 4495b. **Medical Practice Act.** [67th Leg., 1981; Amended 74th Leg., 1995]
Subchapter B. **Board of Medical Examiners.**

Sec. 2.09. **Powers and Duties of Board.**

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(p) The board shall disseminate at least twice a year and at other times determined necessary by the board information as is of significant interest to the physicians in Texas. The information must include summaries of disciplinary orders made against physicians licensed in this state, board activities and functions, pertinent changes in this Act or board rules and regulations, and attorney general opinions. The requirements of this section are in addition to the reporting requirements imposed under Section 4.14 of this Act. The board shall disseminate the information:

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(5) to public libraries throughout the state.

(q) The board shall prepare the following:

(1) an alphabetical listing of the names of the licensees;

(2) an alphabetical listing of the names of the licensees by the county in which the licensee's principal place of practice is located;

(3) a summary of the board's functions;

(4) a copy of this Act and a listing of other laws relating to the practice of medicine;

(5) a copy of the board's rules; and

(6) other information considered appropriate by the board.

(r) The board on request shall distribute a copy of information prepared under Subsection (q) of this section to the requesting person. The board shall distribute on request copies of the information to the public libraries in this state.

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Chapter 10. **OPTOMETRY.**
Article 2. **TEXAS OPTOMETRY BOARD.**

Art. 4552–2.15. **Disposition of Fees.** [61st Leg., 1969; Amended 73rd Leg., 1993]

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(b) The funds realized from annual renewal fees shall be distributed as follows: 15 percent of each renewal fee collected by the board under Section 3.03 of this Act shall be dedicated to the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the School of Optometry.

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Title 132A. **TEXAS DEPARTMENT OF LICENSING AND REGULATION.**
Art. 9102. **Architectural Barriers.** [66th Leg., 1979; Amended 74th Leg., 1995]

Sec. 1 The provisions of this article are to further the policy of the State of Texas to encourage and promote the rehabilitation of persons with disabilities and to eliminate, insofar as possible, unnecessary barriers encountered by persons with disabilities, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when such persons cannot readily use public buildings.

Sec. 2. **Application.**

(a) The standards under this article apply to:

(1) a building or facility used by the public that is constructed, or substantially renovated, modified, or altered, in whole or in part on or after January 1, 1970, through the use of state, county, or municipal funds, or the funds of any political subdivision of the state;

(2) the temporary or emergency construction of a building or facility described by this subsection or Subsection (b) of this section;

(3) a building leased or occupied in whole or in part for use by the state under any lease or rental agreement entered into on or after January 1, 1972;

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*[Note: At the time of printing this publication the statute contains two subsection (c)'s, both of which are shown here.]*

(c) These standards and specifications shall be adhered to in all buildings leased or rented in whole or in part for use by a state agency under any lease or rental agreement entered into on or after January 1, 1972. To such extent as is not contraindicated by federal law or beyond the power of the state's regulation, these standards shall also apply to buildings or facilities leased or rented for use by a state agency through partial or total use of federal funds. Facilities which are the subject of lease or rental agreements on January 1, 1972, will not be required to meet standards and

specifications for the term of the existing lease or rental agreement but must be brought into compliance before a lease or rental agreement is renewed. Where it is determined by the governmental department, agency, or unit concerned that full compliance with any particular standard is impractical, the reasons for such determination shall be set forth in written form by those making the determination and forwarded to the department. If it is determined that full compliance is not practical, there shall be substantial compliance as determined by the department with the standard or specification to the maximum extent practical, and the file system maintained by the department shall include the written record of the determination that it is impractical to comply fully with a particular standard or specification and shall also set forth the extent to which an attempt will be made to comply substantially with the standard or specification. In this subsection, "state agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(c) The commissioner may waive or modify accessibility standards adopted under this article when:

(1) the application of the standards is considered by the commissioner to be irrelevant to the nature, use, or function of a building or facility covered by this article; or

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(e) The commissioner may not waive or modify any standard or specification when:

(1) waiving or modifying a standard or specification would result in a significant impairment of the acquisition of goods and services by persons with disabilities or substantially reduce the potential for employment of persons with disabilities; or

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Sec. 3. **Scope.**

(a) This article is concerned with non-ambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(b) It is intended to make all buildings and facilities covered by this article accessible to, and functional for, persons with disabilities to, through, and within their doors, without loss of function, space, or facilities where the general public is concerned.

Sec. 4. **Definitions.**

For the purpose of this article the following terms have the meanings as herein set forth:

(1) "Disability" means with respect to an individual a physical or mental impairment that substantially limits one or more of the major life activities of such individual.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Commissioner" means the commissioner of licensing and regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Architect" means a person registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(6) "Engineer" means a person registered as an engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

Sec. 5. **Responsibilities for Enforcement.**

(a) ...The department shall from time to time inform professional organizations and others, including persons with disabilities, architects, engineers, and other building professional, of this law and its application. Information disseminated by the department about the program shall include the types of buildings and leases covered by this article, the procedures for submitting plans and specifications for review, complaint procedures, and the address and phone number of the department's program....

(b) The commissioner has all necessary powers to require compliance with the department's rules and regulations and modifications thereof and substitutions therefor....

(c) The standards and specifications to be adopted by the commissioner under this article shall be consistent in effect to those adopted by the American National Standards Institute, Inc. (or its federally recognized successor in function), and the department shall publish the standards and specifications in a readily accessible form for the use of interested parties. The standards, specifications, and other rules to be adopted by the commissioner under this article shall also be consistent with those adopted under federal law.

(d) All plans and specifications for construction or for the substantial renovation, modification, or alteration of a building or facility that has an estimated construction cost of $50,000 or more and that is subject to the provisions of this article shall be submitted to the department for review and approval prior to the time that construction or that substantial renovation, modification, or alteration on the building or facility begins in accordance with rules and regulations adopted by the commissioner. Plans and specifications related to the building or facility shall be submitted to the department by the architect, interior designer, or engineer who has overall responsibility for the design of the constructed or reconstructed building or facility. The owner shall submit the plans and specifications to the department if there is no architect, interior designer, or engineer with that responsibility. Likewise, any substantial modification of approved plans shall be resubmitted to the department for review and approval. The plans and specifications that are not approved or disapproved by the department within 30 days from the receipt of the plans and specifications are automatically approved. If an architect, interior designer, or engineer required to submit or resubmit plans and specifications to the department fails to do so in a timely manner, the commissioner shall report the fact to the Texas Board of Architectural Examiners or the State Board of Registration for Professional Engineers, as appropriate.

(e) The commissioner may review plans and specifications, make inspections, and issue certifications that

structures not otherwise covered by this article are free of architectural barriers and in compliance with the provisions of this article. The department shall inspect each building and facility that has an estimated construction cost of $50,000 or more and that is subject to this article not later than the first anniversary of the date that construction or substantial renovation, modification, or alteration of the building of facility is completed. The department shall inspect each building that is subject to this article because of a lease to the state during the first year of the lease.

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Sec. 6. **Fees.**

The commission shall set and charge, in accordance with Section 12, Article 9100, Revised Statutes, fees for performing its functions under this article. The fees shall be paid by the owner of a building when the department performs a function related to the building under this article. The fee must include a fee for:

(1) reviewing the plans or specifications of a building;

(2) inspecting a building; and

(3) processing a request to waive or modify accessibility standards for a building.

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Title 4. **LIABILITY IN TORT.**
Chapter 84. **CHARITABLE IMMUNITY AND LIABILITY.**

Sec. 84.001. **Name of Act.** [70th Leg., 1987]
This Act may be cited as the Charitable Immunity and Liability Act of 1987.

Sec. 84.002. **Findings and Purposes.** [70th Leg., 1987]
The Legislature of the State of Texas finds that:
(1) robust, active, bona fide, and well-supported charitable organizations are needed within Texas to perform essential and needed services;
(2) the willingness of volunteers to offer their services to these organizations is deterred by the perception of personal liability arising out of the services rendered to these organizations;
(3) because of these concerns over personal liability, volunteers are withdrawing from services in all capacities;
(4) these same organizations have a further problem in obtaining and affording liability insurance for the organization and its employees and volunteers;
(5) these problems combine to diminish the services being provided to Texas and local communities because of higher costs and fewer programs;
(6) the citizens of this state have an overriding interest in the continued and increased delivery of these services that must be balanced with other policy considerations; and
(7) because of the above conditions and policy considerations, it is the purpose of this Act to reduce the liability exposure and insurance costs of these organizations and their employees and volunteers in order to encourage volunteer services and maximize the resources devoted to delivering these services.

Sec. 84.003. **Definitions.** [70th Leg., 1987; Amended 71st Leg., 1989]
In this chapter:
(1) "Charitable organization" means:
(A) any organization exempt from federal income tax under Section 501(a) of the internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code, if it is a nonprofit corporation, foundation, community chest, or fund organized and operated exclusively for charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational purposes, excluding private primary or secondary schools, alumni associations and related on-campus organizations, or is organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community;
(B) any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, or educational organization, excluding alumni associations and related on-campus organizations, or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:
(i) is organized and operated exclusively for one or more of the above purposes;
(ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;
(iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;
(iv) dedicates its assets to achieving the stated purpose or purposes of the organization;
(v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and
(vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees; or
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(2) "Volunteer" means a person rendering services for or on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred, and such term includes a person serving as a director, officer, trustee, or direct service volunteer.
(3) "Employee" means any person, including an officer or director, who is in the paid service of a charitable organization, but does not include an independent contractor.
(4) "Good faith" means the honest, conscientious pursuit of activities and purposes that the organization is organized and operated to provide.

Sec. 84.004. **Volunteer Liability.** [70th Leg., 1987]
(a) Except as provided by Subsection (c) of this section and Section 84.007 of this Act, a volunteer who is serving as an officer, director, or trustee of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of his duties or functions as an officer, director, or trustee within the organization.
(b) Except as provided by Subsection (c) of this section and Section 84.007 of this Act, a volunteer who is serving as a direct service volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in good faith and in the course and scope of his duties or functions within the organization.

(c) A volunteer of a charitable organization is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, including an airplane, to the extent insurance coverage is required by Section 1A, Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), and to the extent of any existing insurance coverage applicable to the act or commission.

(d) The provisions of this section apply only to the liability of volunteers and do not apply to the liability of the organization for acts or omissions of volunteers.

Sec. 84.005. **Employee Liability.** [70th Leg., 1987]

Except as provided in Section 84.007 of this Act, in any civil action brought against an employee of a nonhospital charitable organization for damages based on an act or omission by the person in the course and scope of the person's employment, the liability of the employee is limited to money damages in a maximum amount of $500,000 for each person and $1,000,000 for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.006. **Organization Liability.** [70th Leg., 1987]

Except as provided in Section 84.007 of this Act, in any civil action brought against a nonhospital charitable organization for damages based on an act or omission by the organization or its employees or volunteers, the liability of the organization is limited to money damages in a maximum amount of $500,000 for each person and $1,000,000 for each single occurrence of bodily injury or death and $100,000 for each single occurrence for injury to or destruction of property.

Sec. 84.007 **Applicability.** [72nd Leg., 1991]

(a) This chapter does not apply to an act or omission that is intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others.

(b) This chapter does not limit or modify the duties or liabilities of a member of the board of directors or an officer to the organization or its members and shareholders.

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(g) Sections 84.005 and 84.006 of this Act do not apply to any charitable organization that does not have liability insurance coverage in effect on any act or omission to which this chapter applies. The coverage shall apply to the acts or omissions of the organization and its employees and volunteers and be in the amount of at least $500,000 for each person and $1,000,000 for each single occurrence for death or bodily injury and $100,000 for each single occurrence for injury to or destruction of property. The coverage may be provided under a contract of insurance or other plan of insurance authorized by statute. Nothing in this chapter shall limit liability of any insurer or insurance plan in an action under Chapter 21, Insurance Code, or in an action for bad faith conduct, breach of fiduciary duty, or negligent failure to settle a claim.

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Title 5. **GOVERNMENTAL LIABILITY.**
Chapter 101. **TORT CLAIMS.**
Subchapter B. **Tort Liability of Governmental Units.**

Sec. 101.021. **Governmental Liability.**

A governmental unit in the state is liable for:

(1) property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

(A) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and

(B) the employee would be personally liable to the claimant according to Texas law; and

(2) personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

Sec. 101.0215. **Liability of a Municipality.** [70th Leg., 1987]

(a) A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state's sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to:

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(15) libraries and library maintenance;

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Chapter 102. **TORT CLAIMS PAYMENTS BY LOCAL GOVERNMENTS.**

Sec. 102.001. **Definitions.** [Amended 70th Leg., 1987]

In this chapter:

(1) "Employee" includes an officer, volunteer, or employee, a former officer, volunteer, or employee, and the estate of an officer, volunteer, or employee or former officer, volunteer, or employee of a local government.

(2) "Local government" means a county, city, town, special purpose district, and any other political subdivision of the state.

Sec. 102.002 **Payment of Certain Tort Claims.**

(a) A local government may pay actual damages awarded against an employee of the local government if the damages:

(1) result from an act or omission of the employee in the course and scope of his employment for the local government; and

(2) arise from a cause of action for negligence.

(b) The local government may also pay the court costs and attorney's fees awarded against an employee for whom the local government may pay damages under this section.

(c) A local government may not pay damages awarded against an employee that:

(1) arise from a cause of action for official misconduct; or

(2) arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence.

(d) A local government may not pay damages awarded against an employee to the extent the damages are recoverable under an insurance contract or a self-insurance plan authorized by statute.

Sec. 102.003. **Maximum Payments.**

Payments under this chapter by a local government may not exceed $100,000 to any one person or $300,000 for any single occurrence in the case of personal injury or death or $10,000 for a single occurrence of property damage.

Sec. 102.004. **Defense Counsel.**

(a) A local government may provide legal counsel to represent a defendant for whom the local government may pay damages under this chapter. The counsel provided by the local government may be the local government's regularly employed counsel, unless there is a potential conflict of interest between the local government and the defendant, in which case the local government may employ other legal counsel to defend the suit.

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Chapter 104. **STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS.**

Sec. 104.001. **State Liability; Persons Covered.** [Amended 74th Leg., 1995]

In a cause of action based on conduct described in Section 104.002, the state shall indemnify the following persons, without regard to whether the persons performed their services for compensation, for actual damages, court costs, and attorney's fees adjudged against:

(1) an employee, a member of the governing board, or any other officer of a state agency, institution, or department;

(2) a former employee, former member of the governing board, or any other former officer of a state agency, institution, or department who was an employee or officer when the act or omission on which the damages are based occurred;

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(4) a person serving on the governing board of a foundation, corporation, or association at the request and on behalf of an institution of higher education, as that term is defined by Section 61.003(8), Education Code, not including a public junior college;

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Sec. 104.002. **State Liability; Conduct Covered.** [Amended 74th Leg., 1995]

Except as provided by Subsection (b), the state is liable for indemnification under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of the agency, institution, or department and if:

(1) the damages arise out of a cause of action for negligence, except a willful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person acted in bad faith, with conscious indifference or reckless disregard; or

(3) indemnification is in the interest of the state as determined by the attorney general or his designee.

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Sec. 104.003. **Limits on Amount of Recoverable Damages.** [Amended 74th Leg., 1995]

(a) Except as provided by Subsection (c) or a specific appropriation, state liability for indemnification under this chapter may not exceed:

(1) $100,000 to a single person and $300,000 for a single occurrence in the case of personal injury, death, or deprivation of a right, privilege, or immunity; and

(2) $10,000 for a single occurrence of damage to property.

(b) The state is not liable under this chapter to the extent that damages are recoverable under a contract of insurance or under a plan of self-insurance authorized by statute.

(c) The limits on state liability provided by Subsection (a) do not apply if:

(1) the state liability is based on Section 104.002(b); or

(2) the person for whose acts the state is liable under this chapter is a member of the Texas Board of Criminal Justice.

Sec. 104.0035. **State Liability; Criminal Prosecution.** [74th Leg,, 1995]

(a) The state shall indemnify a person for reasonable attorney's fees incurred in defense of a criminal prosecution against the person if:

(1) the person is covered by Section 104.001;

(2) the attorney general determines that the conduct for which the person is criminally prosecuted could give rise to a civil cause of action covered by Section 104.002;

(3) the person is found not guilty after a trial or appeal or the complaint, information, or indictment is dismissed without a plea of guilty or nolo contendere being entered; and

(4) the attorney general determines that the complaint, information, or indictment presented against the person was dismissed because:

(A) the presentment was made on mistake, false information, or other similar basis, indicating absence of

probable cause to believe, at the time of the dismissal, the person committed the offense; or

(B) the complaint, information, or indictment was void.

(b) State liability for indemnification under this section may not exceed $10,000 for the prosecution of a criminal offense or the prosecution of two or more offenses prosecuted in a single criminal action.

(c) This section does not apply to a person who is criminally prosecuted for operating a motor vehicle while intoxicated under Section 49.04, Penal Code, for intoxication assault committed while operating a motor vehicle under Section 49.07, Penal Code, or for intoxication manslaughter under Section 49.08, Penal Code.

(d) An initial determination of the liability of the state for indemnification and the reasonableness of attorney's fees under this section shall be made by the attorney general upon application by any person other than:

(1) an employee or former employee of the attorney general's office; or

(2) the attorney general or a former attorney general.

(e) If the attorney general determines under Subsection (d) that the state is liable for indemnification, the attorney general shall indemnify the person for reasonable attorney's fees as provided by this section from funds appropriated for that purpose. If the attorney general determines that the state is not liable for indemnification, the person may appeal to a district court in Travis County. A person who is not entitled to an initial determination under Subsection (d) may bring an action in a district court in Travis County.

(f) The district court in Travis County has jurisdiction to hear a suit under this section and may issue an order directing the attorney general's office to indemnify the person for reasonable attorney's fees as provided by this section. The judgment of the district court is final and is not subject to appeal.

Sec. 104.004. **Defense by Attorney General.** [Amended 70th Leg., 1987]

(a) The attorney general shall defend a public servant or estate listed in Section 104.001 in a cause of action covered by this chapter.

(b) The attorney general may settle or compromise the portion of a lawsuit that may result in state liability under this chapter.

(c) It is not a conflict of interest for the attorney general to defend a person under this chapter and also to prosecute a legal action against that person as required or authorized by law if different assistant attorneys general are assigned the responsibility for each action.

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Chapter 106. **DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR, SEX, OR NATIONAL ORIGIN.**

Sec. 106.001. **Prohibited Acts.** [Amended 72nd Leg., 1991]

(a) An officer or employee of the state or of a political subdivision of the state who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

(1) refuse to issue to the person a license, permit, or certificate;

(2) revoke or suspend the person's license, permit, or certificate;

(3) refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or a political subdivision of the state;

(4) refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state;

(5) refuse to grant a benefit to the person;

(6) impose an unreasonable burden on the person; or

(7) refuse to award a contract to the person.

(b) This section does not apply to a public school official who is acting under a plan reasonably designed to end discriminatory school practices.

****

Sec. 106.002. **Remedies.**

(a) If a person has violated or there are reasonable grounds to believe a person is about to violate Section 106.001, the person aggrieved by the violation or threatened violation may sue for preventive relief, including a permanent or temporary injunction, a restraining order, or any other order.

(b) In an action under this section, unless the state is the prevailing party, the court may award the prevailing party reasonable attorney's fees as a part of the costs. The state's liability for costs is the same as that of a private person.

Sec. 106.003. **Penalties.**

(a) A person commits an offense if the person knowingly violates Section 106.001.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than one year; or

(3) both the fine and confinement.

Title 2. **PUBLIC EDUCATION.**
Subtitle B. **STATE AND REGIONAL ORGANIZATION AND GOVERNANCE.**
Chapter 7. **STATE ORGANIZATION.**
Subchapter C. **Commissioner of Education.**

Sec. 7.055. **Commissioner of Education Powers and Duties.** [74th Leg., 1995]

(a) The commissioner has the following powers and duties:

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(9) The commissioner shall have a manual published at least once every two years that contains Title 1 and this title, any other provisions of this code relating specifically to public primary or secondary education, and an appendix of all other state laws relating to public primary or secondary education and shall provide for the distribution of the distribution of the manual as determined by the board.

****

(16) The commissioner shall carry out duties relating to regional education service centers as specified under Chapter 8.

****

(29) The commissioner may enter into contracts concerning technology in the public school system as authorized under Chapter 32.

****

Subchapter D. **State Board of Education.**

Sec. 7.102. **State Board of Education Powers and Duties.** [74th Leg., 1995]

****

(b) The board has the following powers and duties, which shall be carried out with the advice and assistance of the commissioner:

****

(2) The board may enter into contracts relating to or accept grants for the improvement of educational programs specifically authorized by statute.

****

(6) The board shall adopt rules to provide for regional education service center boards of directors as provided by Section 8.003 and rules under which a regional education service center may receive and spend grants under Section 8.124.

****

(25) The board shall develop and update a long-range plan concerning technology in the public school system as required under Section 32.001 and shall adopt rules and policies concerning technology in public schools as provided by Chapter 32.

(26) The board shall conduct feasibility studies related to the telecommunications capabilities of school districts and regional education service centers as provided by Section 32.033.

(27) The board shall appoint a board of directors of the center for educational technology under Section 32.034.

****

Chapter 8. **REGIONAL EDUCATION SERVICE CENTERS.**

*[Note: In reference to Chapter 8, Regional Education Service Centers, the 74th Legislature (1995) provided that "(a) Not later than December 1, 1996, the commissioner of education shall submit to the legislature a proposed revision of Chapter 8, Education Code, as added by this Act. The proposed revision must: (1) provide maximum resources and discretion to school districts and school campuses to purchase training and technical assistance services, (2) state the mission of regional education service centers, (3) provide a structure, including a governing structure, for regional education service centers, (4) provide a funding mechanism for the development of training and technical assistance services at the regional education service centers, and (5) provide for any necessary transfer of: (A) powers and duties of the regional education service centers or the boards of directors of the service centers, (B) obligations, agreements, and contract of the service centers, (C) property of the service centers, including records and funds, and (D) unobligated appropriations to the service centers. (b) On August 31, 1997, each regional education service center established under former Section 11.32, Education Code, is abolished, and Chapter 8, Education Code, as added by this Act, is repealed."]*

Subchapter A. **General Provisions.**

Sec. 8.001. **Establishment.** [74th Leg., 1995]

(a) The agency shall provide for the establishment and operation of not more than 20 regional education service centers.

(b) Regional education service centers shall be located throughout the state so that each school district has the opportunity to be served by and to participate in an approved center on a voluntary basis.

Sec. 8.002. **Purpose.** [74th Leg., 1995]

(a) Regional education service centers shall, at the direction of the commissioner, provide services to assist school districts in improving student performance and increasing the efficiency and effectiveness of school operations.

(b) In addition to core services a regional education service center is required to offer under Section 8.051, a school district or campus may purchase any other available service from any center.
****

Subchapter B. **Powers and Duties.**

Sec. 8.051. **Core Services.** [74th Leg., 1995]
Each regional education service center shall use funds...for developing and maintaining core services for purchase by school districts and campuses. The core services are:
(1) training and assistance in teaching each subject area assessed under Section 39.023;
(2) training and assistance in providing each program that qualifies for a funding allotment under Section 42.151, 42.152, 42.153, or 42.156;
****
(4) training and assistance to teachers, administrators, members of district boards of trustees, and members of site-based decision-making committees; and
(5) assistance in complying with state laws and rules.
****

Sec. 8.054. **Prohibition on Regulatory Function.** [74th Leg., 1995]
A regional education service center may not perform a regulatory function regarding a school district....
****

Sec. 8.124. **Contracts for Grants.** [74th Leg., 1995]
Each regional education service center board of directors, under rules adopted by the State Board of Education, may enter into a contract for a grant from a public or private organization and may spend grant funds in accordance with the terms of the contract.

Subtitle C. **LOCAL ORGANIZATION AND GOVERNANCE.**
Chapter 11. **SCHOOL DISTRICTS.**
Subchapter D. **Powers and Duties of Board of Trustees Independent School District.**

Sec. 11.158. **Authority to Charge Fees.** [74th Leg., 1995]
****
(b) The board may not charge fees for:
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(5) library books required to be used for any educational course or program, other than fines for lost, damaged, or overdue books.
****

Chapter 19. **SCHOOLS IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE.**

Sec. 19.002. **Establishment.** [74th Leg., 1995]
The school district established by the Texas Board of Corrections in 1969 shall be known as the Windham School District, an entity that is separate and distinct from the Texas Department of Criminal Justice. The district may establish and operate schools at the various facilities of the Texas Department of Criminal Justice.
****

Sec. 19.004. **Governance, Limitation on Powers, and Duties.** [74th Leg., 1995]
****
(c) The district shall:
****
(2) coordinate educational programs and services in the department with those provided by other state agencies, by political subdivisions, and by persons who provide programs and services under contract.
****

Sec. 19.006. **Grants and Federal Funds.** [74th Leg., 1995]
(a) The district may accept a grant from a public or private organization and may spend those funds to operate district programs and provide district services.
(b) The district may accept federal funds and shall use those funds in compliance with applicable federal law, regulations, and guidelines.
****

Sec. 19.009. **District Employees.** [74th Leg., 1995]
****
(c) A district employee required under Subchapter B, Chapter 21, to hold a certificate must be certified in accordance with that subchapter.
****

Subtitle D. **EDUCATORS AND SCHOOL DISTRICT EMPLOYEES AND VOLUNTEERS.**
Chapter 21. **EDUCATORS.**
Subchapter A. **General Provisions.**

Sec. 21.003. **Certification Required.** [74th Leg., 1995]
(a) A person may not be employed as a teach, teacher intern or teacher trainee, librarian, educational aide, administrator, or counselor by a school district unless the person hold an appropriate certificate or permit issue as provided by Subchapter B.
****

Subchapter B. **Certification of Educators.**

Sec. 21.031. **Purpose.** [74th Leg., 1995]

(a) The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. The board shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.

(b) In proposing rules under this subchapter, the board shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

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Subchapter I. **Duties and Benefits.**

Sec. 21.402 **Minimum Salary Schedule for Classroom Teachers and Full-time Librarians.** [74th Leg., 1995]

(a) Except as provided by Subsection (d) or (e), a school district must pay each classroom teacher or full-time librarian not less than the minimum monthly salary, based on the employee's level of experience, determined by the following formula....

****

(e) Notwithstanding Subsection (a), a teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994-1995 school year as long as the teacher or librarian is employed by the same district.

(f) In this section, "gross monthly salary" must include the amount a teacher or librarian received that represented a career ladder salary supplement under Section 16.057, as that section existed January 1, 1993.

****

Sec. 21.403. **Placement on Minimum Salary Schedule.** [74th Leg., 1995]

(a) A teacher or librarian shall advance one step on the minimum salary schedule under Section 21.402 for each year of experience as a teacher or librarian until step 20 is reached.

****

(c) In determining the placement of a teacher or librarian on the minimum salary schedule, a district shall credit the person for each year of experience without regard to whether the years are consecutive.

(d) As long as a teacher or librarian who received a career ladder supplement is employed by the same school district, the teacher or librarian is entitled to:

(1) placement on the minimum salary schedule at the step above the step on which the teacher would otherwise be placed, if the teacher or librarian received a career ladder supplement for level two of the career ladder on August 31, 1993; or

(2) placement on the minimum salary schedule at the step two steps above the step on which the teacher would otherwise be placed, if the teacher or librarian received a career ladder supplement for level three of the career ladder on August 31, 1993.

****

Sec. 21.405. **Duty-free Lunch.** [74th Leg., 1995]

(a) Except as provided by Subsection (c), each classroom teacher or full-time librarian is entitled to at least a 30 minute lunch period free from all duties and responsibilities connected with the instruction and supervision of students. Each school district may set flexible or rotating schedules for each classroom teacher or full-time librarian in the district for the implementation of the duty-free lunch period.

(b) The implementation of this section may not result in a lengthened school day.

(c) If necessary because of a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance, a school district may require a classroom teacher or librarian entitled to a duty-fee lunch to supervise students during lunch. A classroom teacher or librarian may not be required to supervise students under this subsection more than one day in any school week. The commissioner by rule shall prescribe guidelines for determining what constitutes a personnel shortage, extreme economic conditions, or an unavoidable or unforeseen circumstance for purposes of this subsection.

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Chapter 22. **SCHOOL DISTRICT EMPLOYEES AND VOLUNTEERS.**

Subchapter B. **Civil Immunity.**

Sec. 22.051. **Immunity From Liability for Professional Employees.** [74th Leg., 1995]

(a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

(c) In this section, "professional employee" includes:

(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;

****

(4) any other person whose employment requires certification and the exercise of discretion.

****

Sec. 22.055. **Frivolous Suit Against Employee.** [74th Leg., 1995]

A court may award costs and reasonable attorney's fees to a school district employee acting under color of employment to the same extent that a court may award costs and attorney's fees to a school district or school district officer under Section 11.161.

Subchapter C. **Criminal History Records.**

Sec. 22.082. **Access to Criminal History Records by State Board for Educator Certification.** [74th Leg., 1995]

The State Board for Educator Certification shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to an applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

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Subtitle F. **CURRICULUM, PROGRAMS, AND SERVICES.**

Chapter 30. **STATE AND REGIONAL PROGRAMS AND SERVICES.**

Subchapter E. **Texas Youth Commission Facilities.**

Sec. 30.102. **Allocation.** [74th Leg., 1995]

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(b) A classroom teacher or full-time librarian employed by the commission is entitled to receive as a minimum salary the monthly salary rate specified by Section 21.402. A classroom teacher or full-time librarian may be paid, from funds appropriated to the commission, a salary in excess of the minimum specified by that section, but the salary may not exceed the rate of pay for a similar position in the public schools of an adjacent school district.

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Chapter 32. **COMPUTERS AND COMPUTER-RELATED EQUIPMENT.**

Subchapter A. **Powers and Duties of State Board of Education Relating to Electronic Instructional Technology and Computer-Related Equipment.**

Sec. 32.001. **Development of Long-Range Plan.** [74th Leg., 1995]

(a) The State Board of Education shall develop a long-range plan for:

(1) acquiring and using technology in the public school system;

(2) fostering professional development related to the use of technology for educators and other associated with child development;

(3) fostering computer literacy among public school students so that by the year 2000 each high school graduate in this state has computer-related skills that meet standards adopted by the board; and

(4) identifying and, through regional education service centers, distributing information on emerging technology for use in the public schools.

(b) The State Board of Education shall update as necessary the plan developed under Subsection (a).

(c) The State Board of Education, in coordination with the Texas Higher Education Coordinating Board and other public agencies and institutions the State Board of Education considers appropriate, shall propose legislation and funding necessary to implement the plan developed under Subsection (a).

(d) In developing the plan, the State Board of Education must consider accessibility of technology to students with disabilities.

Sec. 32.002. **Authority of School District.** [74th Leg., 1995]

A school district is not required by this subchapter to acquire or use technology that has been approved, selected, or contracted for by the State Board of Education or the commissioner.

Sec. 32.003. **Authority of Commissioner to Contract.** [74th Leg., 1995]

The commissioner may contract with developers of technology to supply technology for use by school districts throughout this state.

****

Subchapter B. **Statewide Development Of Technology And Telecommunications.**

Sec. 32.032 **Electronic Information System.** [74th Leg., 1995]

(a) The agency shall establish and maintain an accessible electronic information transfer system, as provided by State Board of Education policy, that is capable of transmitting information among school districts, regional education service centers, and other education-related entities and state agencies.

(b) The commissioner may contract with suppliers of computer hardware, software, or communications equipment or services to provide accessible goods or services to school districts, regional education service centers, or the agency. The State Board of Education by rule shall adopt standards for hardware, software, and communications equipment, training, and services supplied through contract under this section.

Sec. 32.033. **Integrated Telecommunications System.** [74th Leg., 1995]

(a) The agency, in coordination with institutions of higher education and other public or private entities, shall maintain and expand, as needed, the telecommunication capabilities of school districts and regional education service

centers. The agency shall design and implement a telecommunications system for distance learning throughout the state.

****

(c) According to priorities determined by the State Board of Education, the commissioner may contract with a public broadcasting system or another supplier of telecommunications equipment, programming, training, or services to provide equipment, programming, training, or services to school districts, regional education service centers, or the agency.

(d) In providing additional telecommunications capabilities under Subsection (a), the agency shall give priority to school districts with limited financial resources.

Sec. 32.034. **Center for Educational Technology.** [74th Leg., 1995]

(a) The commissioner, as provided by State Board of Education policy, may enter into an interagency contract with a public institution of higher education or a consortium of public institutions of higher education in this state to sponsor a center for educational technology under this section.

(b) The purpose of the center is to improve the quality and efficiency of the educational process through research, development, or site evaluation of:

(1) existing and new applications of technology specifically designed for educational applications; and

(2) educational applications of technology originally developed for commercial or other purposes.

****

Sec. 32.035. **Demonstration Programs.** [74th Leg., 1995]

(a) The agency shall establish demonstration programs to:

(1) investigate the uses, effectiveness, and feasibility of technologies for education; and

(2) provide models for effective education using technology.

(b) The agency may design programs under Subsection (a) to encourage participation by and collaboration among school campuses, school districts, regional educational service centers, the private sector, state and federal agencies, nonprofit organizations, and institutions of higher education.

Sec. 32.036. **Preview Centers and Training Programs.** [74th Leg., 1995]

The agency may establish and provide for the operation of a technology preview center and training program in each regional education service center to assist district and campus personnel in developing and maintaining the comprehensive use of appropriate technology in all aspects of instruction, administration, and communications.

Chapter 33. **SERVICE PROGRAMS AND EXTRACURRICULAR ACTIVITIES.**

Subchapter B. **Libraries.**

Sec. 33.021. **Library Standards.** [74th Leg., 1995]

The Texas State Library and Archives Commission, in consultation with the State Board of Education, shall adopt standards for school library services. A school district shall consider the standards in developing, implementing, or expanding library services.

Sec. 33.022. **Contract with County or Municipality.** [74th Leg., 1995]

(a) A school district may enter into contracts with a county or municipality in which the district is located to provided joint library facilities.

(b) The board of trustees of the school district and the commissioners court of the county or governing body of the municipality must conduct public hearings before entering into a contract under this section. The hearings may be held jointly.

Subtitle I. **SCHOOL FINANCE AND FISCAL MANAGEMENT.**

Chapter 42. **FOUNDATION SCHOOL PROGRAM.**

Subchapter G. **School Facilities Inventory and Standards.**

Sec. 42.351. **Inventory of School Facilities.** [74th Leg., 1995]

(a) The State Board of Education shall establish a statewide inventory of school facilities and shall update the inventory on a periodic basis.

(b) The inventory shall include information on the condition, use, type, and replacement cost of public school facilities in this state.

Sec. 42.352. **Standards.** [74th Leg., 1995]

The State Board of Education shall establish standards for adequacy of school facilities. The standards shall include requirements related to space, educational adequacy, and construction quality. All facilities constructed after September 1, 1992, must meet the standards in order to be financed with state or local tax funds.

Chapter 44. **FISCAL MANAGEMENT.**

Subchapter B. **Purchases; Contracts.**

Sec. 44.031. **Purchasing Contracts.** [74th Leg., 1995]

(a) Except as provided by this section, all school district contracts, except contracts for the purchase of produce or vehicle fuel, valued at $25,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provide the best value to the district:

(1) competitive bidding;

(2) competitive sealed proposals;

(3) a request for proposals;

(4) a catalogue purchase as provided by Subchapter B, Chapter 2157, Government Code;

(5) an interlocal contract; or

(6) a design/build contract.

(b) In determining to whom to award a contract, the district may consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the district's needs;

(5) the vendor's past relationship with the district;

(6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;

(7) the total long-term cost to the district to acquire the vendor's goods or services; and

(8) any other relevant factor that a private business entity would consider in selecting a vendor.

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(h) If school equipment is destroyed or severely damaged, and the board of trustees determines that the delay posed by the competitive bidding process would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment may be made without competitive bidding as otherwise required by this section.

(i) the board of trustees of a school district may acquire computers and computer-related equipment, including computer software, through the General Services Commission under contracts entered into in accordance with Chapter 2157, Government Code. Before issuing an invitation for bids, the commission shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

(j) Without complying with Subsection (a), the board of trustees of a school district may purchase an item that is available form only one source, including:

(1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;

(2) a film, manuscript, or book;

****

(4) a captive replacement part or component for equipment.

(k) The exceptions provided by Subsection (j) do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of $15,000.

****

Sec. 44.032. **Enforcement of Purchase Procedures: Criminal Penalties; Removal; Ineligibility.** [74th Leg., 1995]

(a) In this section:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(3) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(b) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence violates Section 44.031(a) or (b) other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) An officer or employee of a school district commits an offense if the officer or employee knowingly violates Section 44.031, other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a school district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87, Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state....

****

Sec. 44.033. **Purchases of Personal Property Valued Between $10,000 and $25,000.** [74th Leg., 1995]

(a) A school district shall purchase personal property as provided by this section if the value of the items is at least $10,000 but less than $25,000, in the aggregate, for a 12-month period. In the alternative, the school district may purchase those items in accordance with Sections 44.031 (a) and (b).

****

(c) Before the district makes a purchase from a category of personal property, the district must obtain written or

telephone price quotations from at least three vendors from the list for that category. If fewer than three vendors are on the list, the district shall contract each vendor on the list. Whenever possible, telephone quotes should be confirmed in writing by mail or facsimile. The bidding records must be retained with the school's competitive bidding records and are subject to audit. The purchase shall be made from the lowest responsible bidder.
****

Title 3. **HIGHER EDUCATION.**
Chapter 51. **PROVISIONS GENERALLY APPLICABLE TO HIGHER EDUCATION.**
Subchapter A. **Control Of Funds By Certain Institutions.**

Sec. 51.005. **Reports.** [Amended 73rd Leg., 1993]
(a) True and full accounts shall be kept by the governing board and by the employees of the institution of all funds collected from all sources and of all sums paid out and the persons to whom and the purposes for which the sums are paid. The governing board shall annually print a complete report of all the sums collected, all expenditures, and all sums remaining on hand. The report shall show the true condition of all funds as of the August 31 preceding as well as the collections and expenditures for the preceding year.
****
(c) The governing board shall furnish one copy of the report each to the...Legislative Reference Library....

Subchapter C. **Faculty Development Leaves of Absence.**

Sec. 51.101. **Definitions.** [60th Leg., 1967; Amended 72nd Leg., 1991]
In this subchapter:
****
(3) "Faculty member" means a person who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, including professional librarians, or the performance of professional services. However, the term does not include a person employed in a position which is in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system.
****

Sec. 51.103. **Granting Leaves of Absence; Procedures.** [60th Leg., 1967]
(a) On the application of a faculty member, the governing board of an institution of higher education may grant a faculty development leave of absence for study, research, writing, field observations, or other suitable purpose, to a faculty member if it finds that he is eligible by reason of service, that the purpose for which he seeks a faculty development leave is one for which a faculty development leave may be granted, and that granting leave to him will not place on faculty development leave a greater number of faculty members than that authorized.
****

Sec. 51.104. **Service Required.** [60th Leg., 1967]
A faculty member is eligible by reason of service to be considered for a faculty development leave when he has serviced as a member of the faculty of the same institution of higher education for at least two consecutive academic years. This service may be as an instructor as an assistant, associate, or full professor, or an equivalent rank, and must be full-time academic duty but need not include teaching.

Sec. 51.105. **Duration and Compensation.** [Amended 67th Leg., 1981]
(a) The governing board may grant to a faculty member a faculty development leave either for one academic year at one-half of his regular salary or for one-half academic year at this full regular salary. Payment of salary to the faculty member on faculty development leave may be made from the funds appropriated by the legislature specifically for that purpose, or from such other funds as might be available to the institution.
(b) ...A faculty member on faculty development leave may not accept employment from any other person, corporation, or government, unless the governing board determines that it would be in the public interest to do so and expressly approves the employment.
****

Sec. 51.107. **Rights Retained.** [60th Leg., 1967]
****
(c) A member of the faculty on faculty development leave is a faculty member for purposes of participating in the programs and of receiving the benefits made available by or through the institution of higher education or the state to faculty members.
****

Subchapter D. **Information Network Associations.**

Sec. 51.152. **Purpose.** [70th Leg., 1987]
The purpose of this subchapter is to promote the educational programs of state-supported institutions of higher education in Texas by authorizing the establishment and operation of a cooperative system for communication and information retrieval and transfer between the institutions and between the institutions and private educational institutions, industry, and the public. The system, employing two-way, closed-circuit television and other electronic communication facilities, is to provide a means of effecting the interchange of ideas, talents, faculties, libraries, and data processing equipment and a means of carrying out an approved program of instructional television.

Sec. 51.1521. **Interagency Contracts for Networks.** [70th Leg., 1987]

Any institution of higher education may enter into an interagency contract with one or more other institutions of higher education for the establishment and operation of a telecommunications network for the transmission of audio or video signals or electronic data, but only to the extent that the telecommunications services are not available through a system of telecommunications services established for state agencies generally. Each of those interagency contracts shall be reviewed by the Texas Higher Education Coordinating Board.

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Sec. 51.161. **Powers and Duties of Association.**

(a) The association may acquire, operate, and maintain, or obtain by contracting with any communications common carrier in accordance with its tariffs, a multichannel, two-way communications system, including closed-circuit television, linking classrooms, libraries, computer facilities, information retrieval systems, and communications facilities located at the member institutions.

(b) The association may lease, acquire, operate, and maintain, or obtain by contracting with any communications common carrier in accordance with its tariffs, any facilities in addition to those described in Subsection (a) of this section, which the board considers necessary or desirable in carrying out the purposes of this subchapter.

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Sec. 51.162. **Gifts and Grants.**

The association may accept gifts, grants, or donations of real or personal property from any individual, group, association, or corporation. It may accept grants from the United States government subject to the limitations or conditions provided by law.

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Sec. 51.167. **Designation of Regions for Additional Associations.**

(a) In addition to the Western Information Network Association, the Coordinating Board, Texas College and University System, shall at such times as the board shall determine, divide the state into information network association regions consisting of state-supported institutions of higher education located within geographical boundaries prescribed by the coordinating board.

(b) The coordinating board shall give due consideration to the geographical proximity and number of institutions of higher education to be included within a proposed region.

Sec. 51.168. **Creation of Additional Associations.** [Amended 69th Leg., 1985]

(a) The coordinating board shall create and name an information network association within an information network region if:

(1) a majority of the institutions of higher education within a region apply to create an association; and

(2) the institutions applying show good cause for creating an association.

(b) The coordinating board may not create more than one information network association in an information network region.

(c) Each information network association created is an agency of the state.

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Subchapter G. **Responsibilities Of Governing Boards, System Administrations, and Institutions.**

Sec. 51.354. **Institutional Responsibility.** [70th Leg., 1987]

In addition to specific responsibilities imposed by this code or other law, each institution of higher education has the general responsibility to serve the public and, within the institution's role and mission, to:

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(5) protect intellectual exploration and academic freedom;

(6) strive for intellectual excellence;

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Subchapter I. **Texas Eminent Scholars Program.**

Sec. 51.451. **Purpose.** [68th Leg., 1983]

The purpose of this subchapter is to establish a Texas eminent scholars program to encourage donations from the private sector to institutions of higher education for attracting to and retaining in this state eminent scholars.

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Sec. 51.456. **Use of Funds.** [68th Leg., 1983]

An institution may use money it receives from the eminent scholars fund only for supplementing the salary or directly supporting the research or other academic endeavors of an eminent scholar holding an endowed academic position at the institution and may not use any of the money for general operating expenses of the institution.

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Sec. 51.459. **Eligible Academic Disciplines.** [70th Leg., 1987]

(a) After September 1, 1987, a gift that would otherwise be an eligible gift is ineligible if the gift is not in an academic discipline related to aerospace, astronomy, atmospheric science, biological and behavioral sciences, biotechnology, chemistry, computer sciences, earth sciences, energy, engineering, information science, mathematics, material sciences, microelectronics, oceanography, physics, social sciences, or telecommunications.

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Subchapter N. **Partnerships Between Community/Junior Colleges And Upper-Level Universities Or Centers.**

Sec. 51.662. **Partnership Agreements.** [69th Leg., 1985; Amended 73rd Leg., 1993]

With the approval of the Texas Higher Education Coordinating Board, the governing boards of a public community/junior college and an upper-level university or center which are located in the same state uniform service region as adopted by the coordinating board may enter into a partnership agreement designed to coordinate the management and operations of the institutions. The agreements shall in no way abrogate the powers and duties of the boards with regard to the governance of their respective institutions.

Sec. 51.663. **Advisory Committee.** [69th Leg., 1985]

The governing boards of the participating institutions shall appoint an advisory committee composed of three members from each board. The committee shall study the needs of the community served by the institutions and shall make recommendations to the respective boards concerning the development of coordinated programs and services to meet those needs. The committee shall give particular attention to the continuity of curriculum offerings and to the joint use of faculty and staff, facilities, and library resources.

Sec. 51.664. **Joint Use of Personnel.** [69th Leg., 1985]

By interagency contract the governing boards of the participating institutions may fill by joint appointment any administrative, faculty, or support position necessary for the operation of the institutions. In such cases, salaries and benefits shall be prorated and paid from the funds of the respective institutions according to the share of each employee's responsibility to each institution.

Sec. 51.665. **Support Services.** [69th Leg., 1985]

By interagency contract the governing boards of the participating institutions may assign the management and operation of selected services to one of the institutions in order to achieve cost effectiveness. Such services include, but are not limited to, maintenance of building and grounds, operation of auxiliary enterprises, and operation of a jointly supported library.

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Subchapter Z. **Miscellaneous Provisions.**

Sec. 51.903. **Archives; Certified Copies.**

(a) The commissioners court of any county or any other custodian of public records may lend to the library of any state-supported institution of higher education, for any period and on any conditions it may determine, any parts of its archives or records that have become mainly of historical value. The librarian shall give a receipt for any archives or records received. The librarian may make copies for historical study.

(b) The librarian and the archivist of any state-supported institution of higher education are authorized to make certified copies of public records in the custody of the institution. These certified copies are valid in law and have the same force and effect for all purposes as if certified by the county clerk or other custodian as otherwise provided by law. In making a certified copy, the librarian or archivist shall certify that the foregoing is a true and correct copy of the document, and after signing the certificate shall swear to it before any officer authorized to take oaths under the laws of this state.

(c) Nothing in this section affects the authority of the Texas State Librarian concerning public records as currently or later granted by law.

Sec. 51.910. **Interviews for Historical Purposes and Collections of Rare Books, Original Manuscripts, Personal Papers, Unpublished Letters, and Audio and Video Tapes.** [68th Leg., 1983; Amended 70th Leg., 1987]

(a) An oral interview that is obtained for historical purposes by an agreement of confidentiality between an interviewee and a state institution of higher education is not public information. The interview becomes public information when the conditions of the agreement of confidentiality have been met.

(b) Rare books, original manuscripts, personal papers, unpublished letters, and audio and video tapes held by an institution of higher education for the purposes of historical research are confidential, and the institution may restrict access by the public to those materials to protect the actual or potential value of the materials and the privacy of the donors.

Chapter 54. **TUITION AND FEES.**

Subchapter A. **General Provisions.**

Sec. 54.006. **Refund of Tuition and Fees.** [65th Leg., 1977; Amended 73rd Leg., 1993]

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(e) A general academic teaching institution or medical and dental unit shall terminate student services and privileges, such as health services, library privileges, facilities usage, and athletic and cultural entertainment tickets, when a student withdraws from the institution.

Subchapter E. **Other Fees And Deposits.**

Sec. 54.502. **General Property Deposits.** [Amended 73rd Leg., 1993]

(a) An institution of higher education shall collect a reasonable deposit not to exceed $10 from each student to insure the institution against losses, damages, and breakage in libraries and laboratories. The deposit shall be returned on the withdrawal or graduation of a student, less any loss, damage, or breakage caused by the student.

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(b) The medical, dental, and allied health units of The University of Texas System, the University of North Texas Health Science Center at Fort Wroth, the Texas Tech University Health Sciences Center, and The Texas A&M University College of Medicine may collect a breakage or loss deposit no greater than $30.

Sec. 54.504. **Incidental Fees.** [69th Leg., 1985]

(a) The governing board of an institution of higher education may fix the rate of incidental fees to be paid to an institution under its governance by students and prospective students and may make rules for the collection of the fees and for the distribution of the funds, such funds to be accounted for as other designated funds. The rate of an incidental fee must reasonably reflect the actual cost to the university of the materials or services for which the fee is collected. In fixing such rate, the governing board may consult with a student fee advisory committee which the governing board may establish if such student committee does not presently exist.

(b) The board shall publish in the general catalog of the university a description of the amount of each fee to be charged.

(c) In this section, "incidental fees" includes...such fees as...library fines....

Sec. 54.5061. **Student Service Fees; the University of Houston System.** [72nd Leg., 1991]

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(f) Each year the board shall approve for each university a separate budget for student activities and services financed by fees authorized by this section. The budget shall show the fees to be assessed, the purpose for which the fees will be used or the functions to be financed, the estimated income to be derived, and the proposed expenditures to be made. Copies of the budget shall be filed annually with the coordinating board, the governor, the Legislative Budget Board, and the state library.

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Chapter 55. **FINANCING PERMANENT IMPROVEMENTS.**

Subchapter B. **Revenue Bonds And Facilities.**

Sec. 55.11. **General Authority.**

Each board is authorized to acquire, purchase, construct, improve, enlarge, equip, operate, and/or maintain any property, buildings, structures, activities, services, operations, or other facilities, for and on behalf of its institution or institutions, or any branch or branches thereof.

Sec. 55.12. **Contracts for Joint Construction.**

Each board may enter into contracts with municipalities or school districts for the joint construction of museums, libraries, or other buildings.

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Subtitle B. **STATE COORDINATION OF HIGHER EDUCATION.**

Chapter 61. **TEXAS HIGHER EDUCATION COORDINATING BOARD.**

Subchapter C. **Powers And Duties Of Board.**

Sec. 61.051. **Coordination of Institutions of Public Higher Education.** [Amended 73rd Leg., 1993]

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(o) The board shall encourage cooperative programs and agreements among institutions of higher education, including, among others, programs and agreements relating to degree offerings, research activities, and library and computer sharing.

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Sec. 61.057. **Promotion of Teaching Excellence.**

To achieve excellence in the teaching of students at institutions and agencies of higher education, the board shall:

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(4) conduct, and encourage the institutions of higher education to conduct research into new methods, materials, and techniques for improving the quality of instruction and for the maximum utilization of all available teaching techniques, devices, and resources, including but not limited to...interlibrary exchanges, joint libraries...and other innovations that offer promise for superior teaching or for meeting the need for new faculty members to teach anticipated larger numbers of students; and

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Sec. 61.066. **Studies and Recommendations; Reports.** [Amended 64th Leg., 1975]

(a) The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

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Subchapter E. **Contracts With The Texas College Of Osteopathic Medicine.**

Sec. 61.203. **Disbursements.** [62nd Leg., 1971]

(a) ...Expenditures by the Texas College of Osteopathic Medicine of any state funds received by it shall be limited to

the payment of instructional costs, general administration and student services, faculty salaries, departmental operating expense, and library....
****

Subtitle C. **THE UNIVERSITY OF TEXAS SYSTEM.**
Chapter 70. **THE UNIVERSITY OF TEXAS AT DALLAS.**

Sec. 70.07. **Grants and Gifts.** [62nd Leg., 1971]
The board may accept and administer, on terms and conditions satisfactory to it, grants or gifts of property, including real estate or money, that may be tendered to it in aid of the planning, establishment, conduct, and operation of The University of Texas at Dallas, and in aid of the research and teaching at the university. The board may accept from the federal government or any foundation, trust fund, corporation, or individual donations, gifts, and grants, including...libraries...for the use and benefit of the university.

*[Note: Similar statutes apply to the* **University of Texas at San Antonio** *(Sec. 71.06);* **The University of Texas of the Permian Basin** *(Sec. 72.05);* **The University of Texas Medical School at Houston** *(Sec. 73.056);* **The University of Texas Southwestern Medical Center at Dallas** *(Sec. 74.103);* **The University of Texas Medical School at San Antonio** *(Sec. 74.153);* **Medical School to be Established and Located by Board of Regents** *(Sec. 74.204);* **The University of Texas (Clinical) Nursing School at San Antonio** *(Sec. 74.305);* **The University of Texas (Undergraduate) Nursing School at El Paso** *(Sec. 74.355); and a* **Podiatry School to be Established and Located** *(Sec. 74.504)]*

Subtitle D. **THE TEXAS A&M UNIVERSITY SYSTEM.**
Chapter 88. **AGENCIES AND SERVICES OF THE TEXAS A&M UNIVERSITY SYSTEM.**

*[Note: At the time of printing this publication the statute contains two Subchapter G's, one of which is used here.]*

Subchapter G. **Texas Center For Adult Literacy And Learning.**

Sec. 88.541. **Duties of Texas Center for Adult Literacy and Learning.** [74th Leg., 1995]
(a) The Texas Center for Adult Literacy and Learning shall evaluate instructional videotapes or similar recorded materials generally available for use in providing adult literacy instruction and from time to time shall publish a guide describing and evaluating those videotapes and materials. The center shall encourage cable companies and other appropriate entities to use the guide in selecting materials to use in broadcasting and may take other action to promote the broadcast or dissemination of workbooks and other materials the center considers effective in teaching adult literacy.
(b) The center shall develop voluntary standards for the curriculum and workbooks and other materials used in adult literacy programs, including programs for teaching English as a second language. To develop the standards, the center shall organize an advisory group and shall encourage the participation of major providers of adult literacy programs in this state, including private nonprofit organizations, institutions of education, and correctional facilities. The Texas Department of Criminal Justice shall designate an employee of the department to participate in the initial development of the standards.
(c) In connection with the standards developed under Subsection (b), the center shall develop workbooks and other materials to be used by teachers and students in adult literacy programs to track the progress of the student and to allow the student to understand and maintain a record of the student's progress and proficiency.
(d) The center shall develop and update as necessary information brochures, promotional posters, workbooks, or similar materials suitable for distribution to state employees or the general public describing the need for adult literacy and education services in this state and encouraging qualified persons to support or volunteer to assist programs that provide those services. As the center determines is appropriate, the center may provide samples of those workbooks and other materials to the governing boards of chief executive officers of state agencies, including institutions of higher education, and to other employers and institutions in this state and shall encourage those entities to distribute or make available the workbooks and other materials to their employees.

Subtitle E. **THE UNIVERSITY OF SYSTEM.**
Chapter 95. **ADMINISTRATION OF THE TEXAS STATE UNIVERSITY SYSTEM.**
Subchapter A. **Administrative Provisions.**

Sec. 95.01. **Board of Regents.**
[Amended 64th Leg., 1975]
The organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System.

Subchapter B. **Powers And Duties Of Board.**

Sec. 95.21. **General Responsibilities and Authority of Board.** [Amended 68th Leg., 1983]
(a) The board is responsible for the general control and management of the universities in the system and may...purchase libraries...and perform such other acts as in the judgment of the board contribute to the development of the universities in the system or the welfare of their students.
****

Sec. 95.28. **Disbursement of Funds.** [62nd Leg., 1971; Amended 64th Leg., 1975]

All appropriations made by the legislature for the support and maintenance of the system universities, for the purchase of...libraries...shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the universities, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the universities.

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Sec. 95.34. **Donations, Gifts, Grants, and Endowments.** [66th Leg., 1979; Amended 68th Leg., 1983]

(a) The board may accept donations, gifts, grants, and endowments for the universities under its control to be held in trust and administered by the board for the purposes and under the directions, limitations, and provisions declared in writing in the donation, gift, grant, or endowment, not inconsistent with the laws of the state or with the objectives and proper management of the universities. All money accepted under the authority of this section shall be deposited to the credit of one or more special funds created by the board for the university system or universities in the system. The board shall designate one or more depositories for the money received and shall accord money deposited in them the same protection by the pledging of assets of a depository as is required for the protection of public funds.

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Subtitle F. **OTHER COLLEGES AND UNIVERSITIES.**

Chapter 105. **UNIVERSITY OF NORTH TEXAS.**

Subchapter C. **Powers and Duties.**

Sec. 105.41. **General Powers and Duties.** [Amended 73rd Leg., 1993]

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(b) The board may:

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(2) purchase libraries, furniture, equipment, fuel, and supplies necessary to operate the university;

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Subchapter D. **State Historical Collection.**

Sec. 105.61. **Designation.** [62nd Leg., 1971; Amended 70th Leg., 1987]

The historical collection of the university, consisting of books, documents, stamps, coins, firearms, implements of warfare, relics, heirlooms, and other items of historical importance, is designated a State Historical Collection, to be known as "The State Historical Collection of the University of North Texas."

Sec. 105.62. **Gifts and Donations.** [62nd Leg., 1971]

The board may accept and receive gifts, donations, and collections of books, documents, stamps, coins, firearms, implements of warfare, relics, heirlooms, and collections of all kinds having historical importance and value, to be used in teaching the youth of this state.

Chapter 107. **TEXAS WOMAN'S UNIVERSITY.**

Subchapter D. **Dormitories and Improvements.**

Sec. 107.69. **State Historical Collection.** [66th Leg., 1979]

(a) The board may establish an historical collection of items illustrating the history of women in Texas. The historical collection is to be housed in a building belonging to the university and is to be known as "The History of Texas Women." When established, the historical collection may be designated a state historical collection and shall be for the use and enjoyment of all citizens of Texas.

(b) The board may accept donations, gifts, and collections of historical value for the use of the historical collection and shall adopt rules for the receipt, care, custody, and control of items in the collection.

Chapter 110. **TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER.**

Sec. 110.07. **Physical Facilities.** [62nd Leg., 1971; Amended 66th Leg.., 1979]

The board shall make provision for adequate physical facilities for the Health Sciences Center, including library, auditorium, and animal facilities, for use by the Health Sciences Center in its teaching and research programs.

Chapter 111. **UNIVERSITY OF HOUSTON.**

Subchapter H. **Texas Center for Superconductivity.**

Sec. 111.102. **Powers and Duties.** [70th Leg., 1987]

(a) The center shall operate in the field of superconductivity to:

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(5) act as a repository for knowledge and literature.

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Subtitle G. **NON-BACCALAUREATE SYSTEM.**

Chapter 131. **SOUTHWEST COLLEGIATE INSTITUTE FOR THE DEAF.**

Sec. 131.004. **Courses, Programs, and Services.** [67th Leg., 1981]

(a) The institute shall offer, but is not limited to offering, the following courses, programs, and services for hearing-impaired post-secondary students:

(1) learning development services, including academic counseling, tutorial services, reading instruction, services to counter learning disabilities, and library-related services;

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Subtitle H. **RESEARCH IN HIGHER EDUCATION.**
Chapter 142. **Advanced Research Program.**

Sec. 142.002. **Purpose.** [70th Leg., 1987; Amended 73rd Leg., 1993]

The advanced research program is established to encourage and provide support for basic research conducted by faculty members in astronomy, atmospheric science, biological and behavioral sciences, chemistry, computer sciences, earth sciences, engineering, information science, mathematics, material sciences, oceanography, physics, the reduction of industrial, agricultural, and domestic water use, social sciences, and related disciplines in eligible institutions.

Sec. 142.003. **Administration; Guidelines and Procedures.** [70th Leg., 1987]

(a) The coordinating board shall administer the program.

(b) The coordinating board shall appoint an advisory committee that consists of experts in the specified research areas to advise the coordinating board regarding the board's development of research priorities, guidelines, and procedures for the selection of specific projects at eligible institutions.

(c) The guidelines and procedures developed by the coordinating board must provide for awards on a competitive, peer review basis for specific projects at eligible institutions.

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Title 2. **JUDICIAL BRANCH.**
Subtitle A. **COURTS.**
Chapter 22. **APPELLATE COURTS.**
Subchapter C. **Courts Of Appeals.**

Sec. 22.213. **Twelfth Court of Appeals.** [69th Leg., 1985; Amended 72nd Leg., 1991]

(a) The Court of Appeals for the Twelfth Court of Appeals District shall be held in the City of Tyler.

(b) The City of Tyler and Smith County shall furnish and equip suitable rooms and a library for the court and the justices without expense to the state.

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*[Note: A similar statute applies to the 13th Court of Appeals in Corpus Christi and Nueces County.*

Chapter 30. **MUNICIPAL COURTS OF RECORD.**
Subchapter A. **Lubbock.**

Sec. 30.007. **Court Facilities.** [69th Leg., 1985]

The governing body of the city shall provide courtrooms, jury rooms, officers, office furniture, libraries, law books, and other facilities and supplies that the governing body determines are necessary for the proper operation of the municipal courts of record.

*[Note: Similar statutes apply to the cities of Amarillo, Dallas, Houston, Odessa, and San Antonio.]*

Subtitle D. **JUDICIAL PERSONNEL AND OFFICIALS.**
Chapter 51. **CLERKS.**
Subchapter C. **Clerks Of Courts Of Appeals.**

Sec. 51.206. **Law Library.** [69th Leg., 1985]

(a) Each clerk of a court of appeals is the librarian of the court and shall keep the books in the court's library in good order and catalogue them.

(b) The clerk may purchase additional law books for the use of the court from the fees collected by the court. Those expenditures may not exceed annually the specific amounts additionally authorized for the purchase of law books in the General Appropriations Act.

(c) All fees collected for the purchase of law books shall be deposited in the state treasury to the credit of the appropriate court. Book expenditures shall be made on a warrant drawn on the state treasury by the state comptroller as provided by the judiciary section of the General Appropriations Act.

Subtitle H. **INFORMATION RESOURCES.**
Chapter 91. **STATE LAW LIBRARY.**

Sec. 91.001. **Definitions.** [69th Leg., 1985]

In this chapter:

(1) "Board" means the State Law Library Board.

(2) "Director" means the director of the State Law Library.

(3) "Library" means the State Law Library.

Sec. 91.002. **Library Operations.** [69th Leg., 1985]

(a) The library shall maintain a legal reference facility that includes the statutes and case reports from the several states and legal periodicals and journals.

(b) The facility may be used by the members and staff of the supreme court, court of criminal appeals, the office of the attorney general, and other state entities and by citizens of the state.

Sec. 91.003. **Board; Administration.** [69th Leg., 1985]

(a) The library is administered by the board.

(b) The board is composed of the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the attorney general.

(c) A member of the board may designate a personal representative to serve for him.

Sec. 91.004. **Compensation.** [69th Leg., 1985]

A member of the board or his personal representative may not receive compensation for his service on the board. A member or his representative is entitled to reimbursement for actual and necessary expenses incurred in attending meetings or performing other official duties, to be paid out of funds appropriated to the board.

Sec. 91.005. **Personnel.** [69th Leg., 1985]

(a) The board shall employ a director of the library and shall set his salary. The director serves at the will of the board and is accountable only to the board.

(b) The director may employ professional and clerical personnel with the approval of the board. The board shall set their salaries.

Sec. 91.006. **Transfer of Library Materials.** [69th Leg., 1985]

(a) The board by unanimous vote may transfer library books, papers, or publications to the library of the Law School of The University of Texas at Austin.

(b) The transferred materials may be recalled by a majority vote of the board.

Sec. 20.035. **Delivery of Applications to Registrar.** [74th Leg., 1995]

(a) The agency shall deliver to the voter registrar of the county in which the agency office is located each completed registration application submitted to an agency employee.

(b) An application shall be delivered to the registrar not later than the fifth day after the date the application is submitted to the employee.

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Subchapter D. **Public Library.**

Sec. 20.091. **Applicability of Other Provisions.** [74th Leg., 1995]

The other provisions of this chapter apply to a public library except provisions that conflict with this subchapter.

Sec. 20.092. **Registration Procedure.** [74th Leg., 1995]

(a) A public library shall provide to each person of voting age who applies in person for an original or renewal of a library card an opportunity to complete a voter registration application form.

(b) A public library shall use the official form prescribed by the secretary of state.

Sec. 20.093. **Declination Form not Required.** [74th Leg., 1995]

A public library is not required to comply with the procedures prescribed by this chapter relating to the form for a declination of voter registration.

Title 4. **TIME AND PLACE OF ELECTIONS.**
Chapter 42. **ELECTION PRECINCTS.**
Subchapter B. **Changing County Precinct Boundaries.**

Sec. 42.037. **Filing Map of Precinct Boundary Changes With Secretary of State.**

(a) Not later than the 120th day after the date an order changing a county election precinct boundary is adopted, the county clerk shall deliver to the secretary of state a map depicting the affected precinct's boundary as changed and showing the number of the precinct.

(b) The secretary of state shall retain each map for 10 years after receipt. After that period, the secretary shall transfer the map to the state library.

(c) The state librarian shall retain the map for 20 years after receipt.

Title 6. **CONDUCT OF ELECTIONS.**
Chapter 67. **CANVASSING ELECTIONS.**

Sec. 67.017. **Reporting Precinct Results to Secretary of State.** [Amended 72nd Leg., 1991]

(a) After each election for a statewide office or the office of United States representative, state senator, or state representative, the county clerk shall prepare a report of the number of votes, including early voting votes, received in each county election precinct for each candidate for each of those offices. In a presidential election year, the report must include the number of votes received in each precinct for each set of candidates for president and vice-president of the United States.

(b) The county clerk shall deliver the report to the secretary of state not later than the 30th day after election day.

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(d) The secretary of state shall preserve a report received under this section for 10 years unless the secretary prepares a written tabulation of the information contained in the report received. In that case, the secretary shall preserve the original report for two years and the tabulation for 10 years after receipt of the original report.

(e) After the applicable preservation period prescribed by Subsection (d) expires, the secretary of state shall transfer the report or tabulation to the state library.

Title 10. **POLITICAL PARTIES.**
Subtitle B. **PARTIES NOMINATING BY PRIMARY ELECTION.**
Chapter 172. **PRIMARY ELECTIONS.**
Subchapter E. **Conduct Of Election.**

Sec. 172.124. **Reporting Precinct Results to Secretary of State.** [Amended 72nd Leg., 1991]

(a) For each primary election, the county chairman shall prepare a report of the number of votes, including early voting votes, received in each county election precinct by each candidate for a statewide office or the office of United States representative, state senator, or state representative, as provided by Section 67.017 for the report of precinct results for a general election.

(b) The county chairman shall deliver the report to the secretary of state not later than the 30th day after primary election day.

(c) Except as otherwise provided by this section, the report is subject to the requirements prescribed by Section 67.017 for the report prepared for a general election.

Title 14. **ELECTION CONTESTS.**
Subtitle A. **INTRODUCTORY PROVISIONS.**
Chapter 221. **GENERAL PROVISIONS.**

Sec. 221.016. **Preservation of Contest Papers.**

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(b) The papers of a contest in a tribunal other than a court shall be preserved for 10 years after the date the contest is disposed of and shall then be transferred to the state library.

Title 2. **VOTER QUALIFICATIONS AND REGISTRATION.**
Chapter 20. **VOTER REGISTRATION AGENCIES.**
Subchapter A. **General Provisions.**

Sec. 20.001. **Designation of Voter Registration Agencies.** [74th Leg., 1995]

(a) The following state agencies are designated as voter registration agencies:

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(8) any other agency that provides a state-funded program primarily engaged in providing services to persons with disabilities, as determined by the secretary of state.

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(c) Each public library, including any branch or other service outlet, is designated as a voter registration agency. In this chapter, "public library" means a library that:

(1) is regularly open for business for more than 30 hours a week;

(2) is operated by a single public agency or board;

(3) is open without charge to all persons under identical conditions; and

(4) receives its financial support wholly or partly from public funds.

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Sec. 20.004. **Agency Coordinator.** [74th Leg., 1995]

(a) A voter registration agency shall designate one or more persons to coordinate the agency's voter registration program. The agency shall notify the secretary of state of the name of each coordinator.

(b) The registration coordinator shall conduct training for agency employees in voter registration procedures with the assistance of the secretary of state.

(c) The agency shall submit to the secretary of state a plan to implement voter registration procedures under this chapter.

Sec. 20.005. **Degree of Assistance.** [74th Leg., 1995]

A voter registration agency shall provide the same degree of assistance, including any necessary bilingual assistance, to a person in completing a voter registration form as is provided to a person in completing the agency's forms, unless the assistance is refused.

Sec. 20.006. **Determination of Eligibility.** [74th Leg., 1995]

(a) An employee of a voter registration agency may not make a determination about a person's eligibility for registration other than a determination of whether the person is of voting age or is a United States citizen.

****

(c) A person shall be offered voter registration assistance as provided by this chapter even if the person's age or citizenship cannot be determined.

Sec. 20.007. **Prohibited Acts.** [74th Leg., 1995]

An employee of a voter registration agency may not:

(1) seek to influence an applicant's political party preference;

(2) display any political party preference or allegiance; or

(3) make any statement or take any action the purpose or effect of which is to:

(A) discourage the applicant from registering to vote; or

(B) lead the applicant to believe that a decision of whether to register has any bearing on the availability of services or benefits.

Sec. 20.008. **Assistance by Secretary of State or Registrar.** [74th Leg., 1995]

If a question arises concerning voter registration that an agency employee cannot answer, the employee shall provide the person:

(1) the toll-free telephone number of the Elections Division of the Office of the Secretary of State; and

(2) the telephone number of the voter registrar to whom registration applications are submitted.

Sec. 20.009. **Additional Procedures.** [74th Leg., 1995]

The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of voter registration procedures under this chapter.

Subchapter B. **Registration Assistance Generally.**

Sec. 20.032. **Registration Procedures.** [74th Leg., 1995]

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(c) On receipt of a registration application, the appropriate agency employee shall review it for completeness in the applicant's presence. If the application does not contain all the required information and the required signature, the agency employee shall return the application to the applicant for completion and resubmission.

(d) Information regarding the agency or office to which an application is submitted is confidential and may be used only for voter registration purposes.

Sec. 20.033. **Effect of Submission of Application to Employee.** [74th Leg., 1995]

The date of submission of a completed registration application to the agency employee is considered to be the date of submission to the voter registrar for the purpose of determining the effective date of registration only.

Sec. 20.034. **Submission to Registrar by Applicant.** [74th Leg., 1995]

(a) The applicant may keep the registration application form or the completed application to submit the application personally to the voter registrar.

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Sec. 91.007. **Rules.** [69th Leg., 1985]
The board shall adopt rules necessary to ensure the efficient operation of the library.

Sec. 91.008. **Sunset Provision.** [69th Leg., 1985; Amended 72nd Leg., 1991]
The State Law Library is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the library is abolished and this chapter expires September 1, 2001.

Sec. 91.009. **Donations.** [71st Leg., 1989]
The library may accept on behalf of the state donations of money and other property as the library considers appropriate. Money donated to the library shall be deposited in the state treasury.

Sec. 91.011. **Library Service Fees.** [72nd Leg., 1991]
(a) The director of the state law library may set and charge a fee for services provided by state law library staff.
(b) A fee set under Subsection (a) does not apply to a public agency requiring services from the state law library staff

Title 3. **LEGISLATIVE BRANCH.**
Chapter 302. **SPEAKER OF THE HOUSE OF REPRESENTATIVES.**
Subchapter C. **Legislative Bribery.**

Sec. 302.032. **Legislative Bribery: Promises or Threats.** [69th Leg., 1985]
A person commits an offense if, with the intent to influence a member of or candidate for the house of representatives in casting a vote for speaker of the house of representatives, the person:
(1) promises or agrees to cause:
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(B) the appointment of a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;
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(2) threatens to cause:
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(B) the failure to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;
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Sec. 302.033. **Legislative Bribery: Accepting Benefits.** [69th Leg., 1985]
A member of or candidate for the house of representatives commits an offense if, on the representation or understanding that the member or candidate will cast a vote for a particular person for speaker of the house of representatives, the member or candidate solicits, accepts, or agrees to accept:
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(2) the appointment of or refusal to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;
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Subtitle C. **LEGISLATIVE AGENCIES.**
Chapter 321. **STATE AUDITOR.**

Sec. 321.013. **Powers and Duties of State Auditor.** [69th Leg., 1985; Amended 74th Leg., 1995]
(a) The State Auditor shall conduct audits of all departments, including institutions of higher education, as specified in the audit plan. At the direction of the committee, the State Auditor shall conduct an audit or investigation of any entity receiving funds from the state.
(b) The State Auditor shall conduct the audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards.
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(d) At any time during an audit or investigation, the State Auditor may require the assistance of the administrative head, official, auditor, accountant, or other employees of the entity being audited or investigated.
(e) The State Auditor is entitled to access to all of the books, accounts, confidential or unconfidential reports, vouchers, or other records of information in any department or entity subject to audit, including access to all electronic data. However, the State Auditor has access to information and data the release of which is restricted under federal law only with the approval of the appropriate federal administrative agency, and the State Auditor shall have access to copyrighted or restricted information obtained by the Office of the Comptroller of Public Accounts under subscription agreements and utilized in the preparation of economic estimates only for audit purposes.
(f) The State Auditor may conduct financial audits, compliance audits, economy and efficiency audits, effectiveness audits, special audits, and investigations as defined by this chapter and specified in the audit plan.
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Sec. 321.014. **Audit Reports.** [69th Leg., 1985; Amended 72nd Leg., 1991]
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(c) The State Auditor shall submit each report to the committee prior to publication. The State Auditor shall file a copy of each report prepared under this section with:
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(5) the Legislative Reference Library;

(6) the chairman of the governing body and the administrative head of each entity that is the subject of the report; and

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Chapter 322. **LEGISLATIVE BUDGET BOARD.**

Sec. 322.007. **Estimates and Reports.** [69th Leg., 1985; Amended 74th Leg., 1995]

(a) Each institution, department, agency, officer, employee, or agent of the state shall submit any estimate or report relating to appropriations requested by the board or under the board's direction.

(b) Each estimate or report shall be submitted at a time set by the board and in the manner and form prescribed by board rules.

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Sec. 322.010. **Inspections and Hearings.** [69th Leg., 1985]

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(c) The board may hold hearings to consider the estimates required under Section 322.007....

Sec. 322.011. **Performance Audits and Reports.** [69th Leg., 1985; Amended 73rd Leg., 1993]

(a) The board shall establish a system of performance audits and evaluations designed to provide a comprehensive and continuing review of the programs and operations of each state institution, department, agency, or commission.

(b) The board may evaluate the programs and operations of any institution, department, agency, or commission that received an appropriation in the most recent General Appropriations Act or is a state agency. An institution, department, agency, or commission may not be evaluated until after the end of the first full fiscal year of its operation.

(c) On the third Tuesday of each January in which the legislature meets in regular session, the board shall make a performance report to the legislature.

(d) The report shall analyze the operational efficiency and program performance of each institution, department, agency, and commission evaluated. The report shall explicitly state the statutory function each entity is to perform and how, in terms of unit-cost measurement, work load efficiency data, and program output standards established by the board, these statutory functions are being accomplished.

(e) The performance report shall be published in the form prescribed by the board.

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Chapter 323. **TEXAS LEGISLATIVE COUNCIL.**

Sec. 323.012. **Assistance from Other Agencies.** [69th Leg., 1985]

(a) The council may request assistance and advice from all state departments or agencies, including the:

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(2) Texas State Library; and

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Sec. 323.0145. **Electronic Availability of Legislative Information Through the Internet.** [74th Leg., 1995]

(a) In this section:

(1) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(2) "Legislative information" means:

(A) a list of all the members of each house of the legislature

(B) a list of the committees of the legislature and their members;

(C) the full text of each bill as filed and as subsequently amended, substituted, engrossed, or enrolled in either house of the legislature;

(D) the full text of each amendment or substitute adopted by a legislative committee for each bill filed in either house of the legislature;

(E) the calendar of each house of the legislature, the schedule of legislative committee hearings, and a list of the matters pending on the floor of each house of the legislature;

(F) detailed procedural information about how a bill filed in either house of the legislature becomes law, including detailed timetable information concerning the times under the constitution or the rules of either house when the legislature may take certain actions on a bill;

(G) the district boundaries or other identifying information for the following districts in Texas;

(i) house of representatives;

(ii) senate;

(iii) State Board of Education; and

(iv) United States Congress; and

(H) other information related to the legislative process that in the council's opinion should be made available through the Internet.

(b) The council, to the extent it considers it to be feasible and appropriate, may make legislative information available to the public through the Internet.

(c) The council may make available to the public through the Internet any documentation that describes the electronic digital formats of the legislative information.

(d) The access to legislative information allowed by this section:

(1) is in addition to the public's access to the information through other electronic or print distribution of the information;

(2) does not alter, diminish or relinquish any copyright or other proprietary interest or entitlement of the State of Texas or a private entity under contract with the state; and

(3) does not affect Section 323.014.

## Chapter 324. LEGISLATIVE REFERENCE LIBRARY.

Sec. 324.001. **Definitions.** [69th Leg., 1985]
In this chapter:
(1) "Library" means the Legislative Reference Library.
(2) "Board" means the Legislative Library Board.
(3) "Director" means the director of the library.

Sec. 324.002. **Establishment.** [69th Leg., 1985]
The Legislative Reference Library is an independent agency of the legislature.

Sec. 324.004. **Legislative Library Board.** [69th Leg., 1985]
(a) The board controls and administers the library.
(b) The board consists of:
(1) the lieutenant governor;
(2) the speaker of the house of representatives;
(3) the chairman of the senate finance committee;
(4) the chairman of the house appropriations committee;
(5) one other member of the senate appointed by the lieutenant governor; and
(6) one other member of the house appointed by the speaker.
(c) Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in attending meetings and performing official functions.
(d) Actual and necessary expenses are paid from funds appropriated to the board.

Sec. 324.005. **Director.** [69th Leg., 1985; Amended 71st Leg., 1989]
(a) The board shall appoint a director to serve at the pleasure of the board.
(b) The board shall set the salary of the director.

Sec. 324.006. **Personnel.** [69th Leg., 1985]
(a) The director, with the approval of the board, may employ professional and clerical personnel.
(b) The board shall set the salaries of the personnel employed by the director.

Sec. 324.007. **Duties.** [69th Leg., 1985]
(a) The library shall be maintained for the use and information of members of the legislature, heads of state departments, and citizens of this state.
(b) The library shall contain, as may best be made available for legislative use, the following items:
(1) checklists and catalogues of current legislation in this and other states;
(2) catalogues of bills and resolutions presented in either house of the legislature;
(3) checklists of public documents in each state;
(4) checklists of all reports issued by each department, agency, board, or commission of this state; and
(5) digests of public laws of this and other states.
(c) The director and library employees shall provide any assistance requested by a member of the legislature in researching and preparing bills and resolutions.
(d) The board shall adopt rules necessary to ensure the library's efficient operation.

Sec. 324.008. **Disposition of Documents.** [69th Leg., 1985]
(a) The library is a depository library as defined by Section 1, Chapter 438, Acts of the 58th Legislature, 1963 (Article 5442a, Vernon's Texas Civil Statutes), and shall receive state documents and publications from other states distributed by the Texas State Library.
(b) Each printed daily legislative journal, bill, resolution, or other legislative document shall be delivered daily to the library.
(c) At the close of each legislative session, each daily legislative journal, bill, or resolution possessed by the senate or house sergeant at arms shall be delivered to the library to be disposed of at the discretion of the director.

Sec. 324.009. **Gifts and Grants.** [70th Leg., 1987]
(a) The board may accept gifts, grants, and donations from any organization described in Section 501(c)(3) of the Internal Revenue Code for the purpose of funding any activity under this chapter.
(b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting members of the board and reported in the public record of the board with the name of the donor and purpose of the gift, grant, or donation.

Sec. 324.010. **Copy Costs; Format.** [73rd Leg., 1993]
The library has exclusive authority to determine the charge for copies or reproduction of records in the custody of the library. The library may reproduce records in a format such as CD-ROM, another computer-readable format, or any other format determined by the library and provide records in that format for a charge determined by the library.

## Chapter 326. COOPERATION BETWEEN LEGISLATIVE AGENCIES.

Sec. 326.001. **Definitions.** [69th Leg., 1985; Amended 70th Leg., 1987]
In this chapter, "legislative agency" means:
(1) the senate;
(2) the house of representatives;
(3) a committee, division, department, or office of the senate or house;
(4) the Texas Legislative Council;
(5) the Legislative Budget Board;
(6) the Legislative Reference Library;
(7) the office of the State Auditor; or
(8) any other agency in the legislative branch of state government.

Sec. 326.002. **Provision of Services**. [69th Leg., 1985; Amended 70th Leg., 1987]

(a) A legislative agency may provide administrative, professional, clerical, data processing, and other services to another legislative agency with or without reimbursement and may transfer equipment, supplies, and materials to the other legislative agency with or without reimbursement.

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Title 4. **EXECUTIVE BRANCH.**
Subtitle A. **EXECUTIVE OFFICES.**
Chapter 404. **STATE TREASURER.**
Subchapter F. **State Funds Reform Act.**

Sec. 404.093. **Applicability of Subchapter; Exemptions.** [70th Leg., 1987]

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(b) This subchapter does not apply to:

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(4) funds grants, donations, and proceeds from funds, grants, and donations, given in trust to the Texas State Library and Archives Commission for the establishment and maintenance of regional historical resource depositories and libraries in accordance with Section 441.074;

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Chapter 405. **SECRETARY OF STATE.**
Subchapter B. **Duties.**

Sec. 405.011. **Official Documents.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) The secretary of state shall arrange and preserve books, maps, parchments, records, documents, and papers properly deposited in the secretary of state's office and sealed with the state seal.

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Sec. 405.012. **Exchanges.** [70th Leg., 1987]

(a) The secretary of state shall send, as the secretary of state considers appropriate, copies of laws and judicial reports printed and published by order of the legislature at the expense of the state to:

(1) the librarian of congress;

(2) the United States secretary of state;

(3) the United States secretary of the treasury;

(4) the executive department of each state; and

(5) each foreign librarian or government with whom a system of library exchange is established.

(b) Subject to the requirements of Subsection (c), the secretary of state, for the benefit of The University of Texas law library, shall exchange the reports of the supreme court, court of criminal appeals, and courts of appeals, state session laws and revised statutes, and other state publications and state department reports for similar material of the United States, other states, or foreign countries.

(c) The secretary of state shall keep on hand a sufficient number of copies of state publications to meet the reasonable demands of the state.

Sec. 405.013. **Court Reports**. [70th Leg., 1987]

(a) The secretary of state shall receive the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals from the supreme court reporter.

(b) The secretary of state may sell single copies of these reports for a price equal to the contract price for printing, excluding postage or express charges....

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(d) The secretary of state shall deliver one copy of these reports to:

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(6) the librarian of The University of Texas.

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Sec. 405.014. **Acts of the Legislature**. [Amended 72nd Leg., 1991]

At each session of the legislature the secretary of state shall obtain the bills that have become law. Immediately after the closing of each session of the legislature, the secretary of state shall bind all enrolled bills and resolutions in volumes on which the date of the session is placed.

Sec. 405.017. **Miscellaneous Duties.** [70th Leg., 1987; Amended 74th Leg., 1995]

The secretary of state shall:

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(3) keep in a separate suitable book a register of all state officers;

(4) immediately on receipt, deliver to the person in charge of the state library all books, maps, charts, printed volumes of the laws of a nation, territory, or another state, or other political or miscellaneous publications received in the secretary of state's office;

(5) immediately on receipt, deliver to the supreme court librarian reports of courts of a nation, territory, or another state received in the secretary of state's office; and

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Sec. 405.018. **Computer Information**. [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The secretary of state may establish a system to provide access by electronic data transmittal processes to information that is:

(1) stored in state computer record banks maintained by the secretary of state;

(2) not classified as confidential under a statute or court decision; and

(3) not maintained by the secretary of state under:

(A) Chapter 572;

(B) Title 15, Election Code; or

(C) Chapter 305, Government Code.

(b) The secretary of state may:

(1) develop computer software to facilitate the discharge of the constitutional and statutory duties of the office; and

(2) enter agreements to transfer the software on the terms and conditions specified in the agreements.

(c) Computer software developed under Subsection (b) shall be reviewed and certified by the Automated Information and Telecommunications Council.

(d) The secretary of state shall set and charge a fee for access to information under Subsection (a) in an amount reasonable and necessary to cover the costs of establishing and administering the system under that subsection. The secretary of state may assess a reasonable fee for a transfer of software under Subsection (b).

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Title 4. **EXECUTIVE BRANCH.**
Subtitle D. **HISTORY, CULTURE, AND EDUCATION.**
Chapter 441. **LIBRARIES AND ARCHIVES**
Subchapter A. **Texas State Library And Archives Commission.**

Sec. 441.001. **Commission Members.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The Texas State Library and Archives Commission is composed of six members appointed by the governor with the advice and consent of the senate. All six members must be representatives of the general public. A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of library or information science;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) Members of the commission serve staggered terms of six years.

(c) A person appointed to fill a vacancy serves for the remainder of the term to which that person's predecessor was appointed.

(d) An appointment to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(e) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(f) An officer, employee, or paid consultant of a Texas trade association in the field of library and information science, archives management, or records management may not be a member of the commission or employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(g) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of library and information science, archives management, or records management may not be a member of the commission and may not be an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(h) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business competitors or professionals in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(i) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a);

(2) does not maintain during service on the commission the qualifications required by Subsection (a);

(3) violates a prohibition established by Subsection (e), (f), or (g);

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(j) The validity of an action of the commission is not affected by the fact that it was taken at a time a ground for removal of a member of the commission existed.

(k) If the director and librarian has knowledge that a potential ground for removal exists, the director and librarian shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director and librarian shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

(l) The commission shall be assigned suitable offices in the Capitol area in which the commission shall hold at least one regular meeting annually and as many special meetings as are necessary.

(m) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(n) A member of the commission may not receive compensation for services as a member. A member is entitled to reimbursement for actual expenses reasonably incurred in connection with the performance of those services, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(o) The commission is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001.

(p) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(q) The Texas State Library and Archives Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2007.

Sec. 441.0011. **Training for Commission Members.** [74th Leg., 1995]

(a) Before a member of the commission may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of a training program that meets the requirements of this section.

(b) A training program under this section shall provide information to the member regarding:

(1) the enabling legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Sec. 441.002. **Director and Librarian.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission shall appoint a director and librarian.

(b) The director and librarian is the executive and administrative officer of the commission and shall discharge the administrative and executive functions of the commission.

(c) To be appointed as the director and librarian, a person must have:

(1) at least two years of training in library science or experience in teaching or research or in a library that is the equivalent of two years of training in library science; and

(2) at least two years of administrative experience in the field of libraries or research or in a related field.

(d) The director and librarian serves at the will of the commission.

(e) The director and librarian shall give bond in the sum of $5,000 for the proper care of the Texas State Library and its equipment.

(f) Based on the sworn account of the director and librarian showing expenses in detail, the director and librarian is entitled to reimbursement for actual expenses incurred when traveling in the service of the commission.

(g) Under the direction of the commission, the director and librarian shall:

(1) record the commission's proceedings;

(2) keep an accurate account of the commission's financial transactions;

(3) have charge of the state library and any book, picture, document, newspaper, manuscript, archive, relic, memento, flag, or similar item contained in the library;

(4) endeavor to collect any manuscript record relating to the history of Texas possessed by a private individual, or if the original record cannot be obtained, endeavor to procure an authenticated copy;

(5) seek diligently to procure a copy of any printed matter, including any book, pamphlet, or map, giving valuable information concerning this state;

(6) collect portraits or photographs of as many prominent Texans as possible;

(7) endeavor to complete the files of early Texas newspapers in the state library and of other publications of this state that seem necessary to preserve in the state library an accurate record of the history of Texas;

(8) demand and receive from the officer of the state department in charge of it, any book, map, paper, manuscript, document, memoranda, or data relating to the history of Texas not connected with or necessary to the current duties of the officer;

(9) carefully classify, catalogue, and preserve any book, map, paper, manuscript, document, memoranda, or data received under Subdivision (8);

(10) endeavor to procure from Mexico the original archives that have been removed from Texas and that relate to the history and settlement of Texas or, if the originals cannot be procured, endeavor to procure authentic copies of the originals;

(11) procure the original of any manuscript relating to the history of Texas that is preserved in an archive outside this state or, if the original cannot be procured, procure an authentic copy of the original;

(12) preserve any historical relic, memento, antiquity, or work of art relating to the history of Texas that comes into the director and librarian's possession as director and librarian;

(13) endeavor constantly to build up a historical museum worthy of the interesting and important history of this state;

(14) give careful attention to the proper classification, indexing, and preserving of the official archives in the director and librarian's custody;

(15) make a biennial report to the commission that is accompanied by any historical papers or documents the director and librarian considers to be of sufficient importance;

(16) ascertain the condition of all public libraries in this state and report the results to the commission;

(17) encourage and promote the establishment of effective records management programs in the local governments of this state;

(18) endeavor to ensure that the historically valuable records of the local governments of this state are properly preserved and made available for public use; and

(19) perform any other duty the commission assigns.

(h) Under the direction of the commission, the director and librarian may:

(1) spend money appropriated for that purpose to purchase any book relating to Texas;

(2) approve the voucher for any expenditure made in connection with the state library; and

(3) withhold from any library a public document furnished the commission for distribution or an interlibrary loan the library desires if the library refuses or neglects to furnish an annual report or other information the librarian requests.

(i) If there is a disagreement as to the proper custody of a book, map, paper, manuscript, document, memorandum, or data under Subsection (g)(8), the attorney general shall decide proper custody.

(j) The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the director and librarian and the staff of the commission.

(k) The commission shall comply with federal and state laws related to program and facility accessibility. The director and librarian shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

Sec. 441.003. **Employees.** [70th Leg., 1987]

(a) Subject to the approval of the commission, the director and librarian shall appoint an assistant state librarian, a state archivist, and other assistants and employees necessary for the maintenance of the libraries and archives of this state.

(b) The assistant state librarian has the rank of a department head. In the absence of the director and librarian, the assistant may sign and certify accounts and documents in the same manner and with the same legal authority as the director and librarian. The assistant shall give bond to the governor in the sum of $3,000 and shall take the official oath.

(c) To be eligible for appointment as state archivist, a person must present satisfactory evidence of completion of one year's advance work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French, but is not required to have technical library school training or library experience to be appointed state archivist.

(d) An assistant other than the assistant state librarian serves in the grade of head of a department, library assistant, clerk, or laborer. To be eligible for appointment as the head of a department, a person must have technical library training and at least one year of experience in library work. To be eligible for appointment as a library assistant, a person must have technical library training. To be eligible for appointment as a clerk, a person must hold a diploma from a high school considered to be first class according to the standards of the State Board of Education or The University of Texas or present satisfactory evidence of educational training equivalent to that provided by a first class high school, and the person must present satisfactory evidence of proficiency in stenography and typewriting or bookkeeping. To be eligible for appointment as a laborer, a person must present satisfactory evidence of education sufficient to do any elementary
clerical work required.

Sec. 441.004. **Career Ladder; Performance Evaluations.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The director and librarian or the director and librarian's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The director and librarian or the director and librarian's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

Sec. 441.005. **Standards of Conduct; Equal Employment Opportunity.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The director and librarian or the director and librarian's designee shall provide to members of the commission and to commission employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The director and librarian or the director and librarian's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to address those areas of underuse appropriately.

(c) A policy statement prepared under Subsection (b) must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1), and be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports made to the legislature.

Sec. 441.006. **General Powers and Duties.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission shall:

(1) govern the Texas State Library;

(2) adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries;

(3) collect materials relating to the history of Texas and adjoining states;

(4) preserve, classify, and publish the manuscript archives and other matters it considers proper;

(5) diffuse knowledge relating to the history of Texas;

(6) encourage historical work and research;

(7) mark historic sites and houses and secure their preservation;

(8) aid those studying problems to be dealt with by legislation;

(9) prepare and make available to the public and appropriate state agencies information of public interest describing the functions of the commission and the commission procedures by which complaints are filed with and resolved by the commission;

(10) deposit money paid to the commission under this chapter subject to Subchapter F, Chapter 404;

(11) give to any person contemplating the establishment of a public library advice regarding matters such as maintaining a public library, selecting books, cataloging, and managing a library;

(12) conduct library institutes and encourage library associations;

(13) aid and encourage, by adoption of policies and programs, the development of effective records management and preservation programs in the local governments of the state;

(14) adopt rules governing the preservation, microfilming, destruction, or other disposition of local government records; and

(15) establish by rule methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission.

(b) The commission may:

(1) purchase, as state property, any suitable book, picture, or similar item, within the limits of the annual legislative appropriation;

(2) receive a donation or gift of money or property on any terms and conditions it considers proper as long as the state does not incur financial liability;

(3) accept, receive, and administer federal funds made available by grant or loan to improve the public libraries of this state; and

(4) contract or agree with the governing body or head of a county, city, or town of this state to meet the terms prescribed by the United States and consistent with state law for the expenditure of federal funds for improving public libraries.

Sec. 441.007. **Certification of County Librarians.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission shall pass on the qualifications of a person wanting to become a county librarian in this state and shall adopt rules necessary to administer that responsibility.

(b) The educational requirement for permanent certification as a county librarian is:

(1) graduation from a library school accredited by the American Library Association, if the commission determines that the association has accreditation standards that ensure a high level of scholarship from students; or

(2) graduation with a master's degree in library science from an institution of higher education accredited by an organization that the commission determines has accreditation standards that ensure a high level of scholarship from students.

(c) The commission by rule may establish a fee payable by an applicant to recover its costs arising from certification of county librarians.

(d) The commission shall keep information about each complaint filed with the commission. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.

(e) The commission shall keep a file about each written complaint filed with the commission that it has authority to

resolve. The commission shall provide to the person filing the complaint and the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

Sec. 441.0071. **Certificate Renewal.** [74th Leg., 1995]

(a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the commission before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed under the provisions of this section.

(b) If the person's certificate has been expired for 90 days or less, the person may renew the certificate by paying to the commission one and one-half times the required renewal fee.

(c) If the person's certificate has been expired for longer than 90 days but less than one year, the person may renew the certificate by paying to the commission two times the required renewal fee.

(d) If the person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by complying with the more stringent, as determined by the commission, of:

(1) the requirements and procedures for obtaining an original certificate; or

(2) the requirements for renewing a certificate.

(e) If the person held a certificate in this state, moved to another state, and currently holds a certificate and has been in practice in the other state for the two years preceding application, the person may renew an expired certificate. The person must pay to the commission a fee that is equal to two times the required renewal fee for the certificate.

(f) At least 30 days before the expiration of a person's certificate, the commission shall send written notice of the impending certificate expiration to the person at the person's last known address according to the records of the commission.

Sec. 441.0072. **Certificates From Other States.** [74th Leg., 1995]

The commission may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid certificate from another state that has certification requirements substantially equivalent to those of this state.

Sec. 441.0073. **Certificate Expiration Dates.** [74th Leg., 1995]

The commission by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the expiration date is changed, certification fees shall be prorated on a monthly basis so that each certificate holder pays only that portion of the certification fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

Sec. 441.0074. **Disciplinary Actions.** [74th Leg., 1995]

If the commission proposes to suspend, revoke, or refuse to renew a person's certificate, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001. Rules of practice adopted by the commission under Section 2001.004 applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Sec. 441.008. **Transfer or Exchange of Books or Documents.** [70th Leg., 1987]

(a) The commission may transfer a book or document to another library that is supported by state appropriation if the commission believes that the transfer would benefit the state library. The commission may make the transfer permanent or temporary.

(b) If a duplicate book or document is no longer needed by the state library, the commission may exchange the duplicate or may dispose of the duplicate to any state or local public library.

(c) This section does not apply to a book or document that is an archive of the state library.

Sec. 441.009. **State Plan for Library Services and Construction.** [70th Leg., 1987]

(a) The commission may adopt a state plan for improving services of and constructing county, municipal, and other public libraries.

(b) The state library shall prepare the plan for the commission and shall administer the plan the commission adopts.

(c) The plan must include a procedure by which a county or municipal library may apply for money under the plan and a procedure for a fair hearing for a library whose application for money is refused. Money from local, state, or federal sources may be used. The money shall be administered according to local, state, and federal requirements.

Sec. 441.0091. **Grant Program for Local Libraries.** [74th Leg., 1995]

(a) In addition to a grant or funding under Subchapter I, the commission may provide for grants to meet specific information needs of residents of this state and specific needs of local libraries that are not adequately addressed under Subchapter I or other law.

(b) The commission, in designing the grant program under this section:

(1) may consider federal law and federal funding priorities;

(2) may include competitive grants; and

(3) shall adopt by rule the guidelines for awarding grants.

Sec. 441.010. **Custody of Records.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) A book, picture, document, publication, or manuscript received through gift, purchase, or exchange or on deposit, from any source, for use of the state, except an item subject to control of the State Preservation Board, constitutes part of the state library and shall be placed in the state library for use by the public. With the advice of the commission, the State Preservation Board may determine the placement and removal of items in buildings under the board's care.

(b) A book or paper, including a picture, map, document, manuscript, memorandum, or data, that relates to the history of Texas as a province, colony, republic, or state and that is delivered to the director and librarian by an officer or other person, in accordance with law, is considered a book or paper of the state library and constitutes a part of the archives of the state library. On application of an interested person, the director and librarian or archivist of the state library shall make and certify a copy from the archives. That certificate has the same force and effect as if made by the officer originally in custody of it.

(c) As an exception to Subsection (b), the director and librarian or a staff member of the commission may not make a certified copy of a local government record on microfilm obtained by the commission under Section 204.009, Local Government Code, without the consent of the original custodian of the record. Certified copies of local government records in the custody of the commission may be provided without the consent of the original custodian only if the original custodian has not retained the original or a copy of the record or if ordered to provide the copies by a court.

(d) The commission has custody and control of a book, document, newspaper, manuscript, archive, relic, memento, flag, work of art, or similar item and shall collect and preserve historical data.

(e) A state official may turn over to the state library for permanent preservation in the library an official book, record, document, original paper, map, chart, newspaper file, or printed book not in current use in the official's office. The director and librarian shall give the official a receipt for an item turned over under this subsection.

Sec. 441.0105. **Right of Recovery.** [74th Leg., 1995]

(a) The governing body of a state agency may demand and receive from any person any state government record in private possession the removal of which from the possession of the agency or the agency's predecessor was not authorized by law.

(b) The director and librarian may demand and receive from any person any state government record of permanent value in private possession.

(c) If the person in possession of the state government record refuses to deliver the record on demand, the director and librarian or the governing body of a state agency may ask the attorney general to petition a district court in Travis County for the recovery of the record as provided by this section. If the court finds that the record is a state government record, the court shall order the return of the record to the custody of the state. As part of the petition or at any time after its filing, the attorney general may petition to have the record seized pending the determination of the court if the director and librarian or governing body finds the record is in danger of being destroyed, mutilated, altered, secreted, or removed from the state.

(d) A state government record recovered as the result of a petition by the attorney general shall be transferred to the custody of the commission or other state agency for which the return of the record was originally demanded.

(e) If the attorney general petitions a court for the recovery of a record under Subsection (c) and prevails, the court shall award attorney's fees and court costs to the prevailing party.

(f) In this section, "state agency" means a state executive, judicial, or legislative department, institution, board, or commission, including an eleemosynary institution.

Sec. 441.011. **Relics.** [70th Leg., 1987]

(a) Under conditions and terms of agreement that will ensure the safekeeping of the relics in the Texas Museum, the commission temporarily may place in the custody of the Daughters of the Republic of Texas or the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the state library.

(b) A transfer under Subsection (a) does not affect the state's title to the relics.

(c) The commission may remove the relics at any time.

Sec. 441.0115. **Agreement with Mexico.** [74th Leg., 1995]

The commission may negotiate an agreement with the appropriate authorities in Mexico under which Texas will trade or lend to Mexico the flags of the Toluca Battalion, the Guerrero Battalion, and the Matamoros Battalion captured at the Battle of San Jacinto and Mexico will trade or lend to Texas the flag of the New Orleans Greys captured at the Battle of the Alamo. An agreement under this section:

(1) may not affect title to the flags;

(2) may provide that Texas will restore the San Jacinto flags to a suitable condition and Mexico will restore the Alamo flag to a suitable condition before the trade or loan of the flags as long as such conditioning does not alter the authenticity or integrity of the flags; and

(3) is not valid if it is not approved by the governor and by the appropriate authority for approval under the laws of Mexico.

Sec. 441.012. **Sale of Texas Archives.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission may sell copies of the Texas Archives at a price not exceeding 25 percent above the cost of publishing.

(b) Any money paid to the commission for the sale of copies of the Texas Archives is subject to Subchapter F, Chapter 404.

(c) The cost of printing the Texas Archives shall be paid with funds appropriated for that purpose.

(d) A copy of each volume of the Texas Archives may be distributed free to the governor, each member of the legislature, and each public or institutional library of this state.

Sec. 441.013. **Reports.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission shall make a biennial report to the governor that includes:

(1) a comprehensive view of the operation of the commission in discharging the duties imposed by this subchapter;

(2) a review of the library conditions in this state;

(3) an itemized statement of the commission's expenditures;

(4) any recommendations suggested by the experience of the commission;

(5) careful estimates of money necessary for carrying out this subchapter; and

(6) the biennial report of the director and librarian required by Section 441.002 (g)(15).

(b) The report made under Subsection (a) shall be printed, and the governor shall lay the report before the legislature as the governor does with other departmental reports.

(c) The director and librarian shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

Sec. 441.014. **Audit.** [70th Leg., 1987; Amended 71st Leg., 1989]

The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 441.015. **Seal.** [70th Leg., 1987]

(a) The official seal of the state library is a circle of not less than 1 1/2 nor more than two inches in diameter that bears a star of five points surrounded by two concentric circles between which is printed "Texas State Library."

(b) The seal shall be used to authenticate the official acts of the Texas State Library.

Sec. 441.016. **Building.** [70th Leg., 1987]

The name of the state archives and library building is the Lorenzo de Zavala State Archives and Library Building.

Sec. 441.017. **Cost Recovery for Records Storage Services.** [74th Leg., 1995]

(a) This section:

(1) applies to a record stored by the commission for a state agency; and

(2) does not apply to a record that is under the permanent control of the commission for archival purposes.

(b) The commission shall establish and keep current a cost recovery schedule for its records storage services. The schedule shall show the total cost, including indirect costs, to the commission of its records storage services.

(c) Each state agency that will use the commission's records storage services during a state fiscal biennium shall send to the commission an estimate of the amount and nature of the services that the agency will use during the biennium. The commission shall prescribe:

(1) the time that the estimate must be sent; and

(2) the information that must be included in the estimate.

(d) The commission shall base its legislative appropriations request for providing records storage services to other agencies for the biennium on the estimates received under Subsection (c). The commission's appropriations request must:

(1) show the estimated cost for each agency for records storage services; and

(2) identify the estimated amount that would need to be appropriated from the general revenue fund, account in the general revenue fund, or other fund or account to recover fully the commission's costs in providing records storage services for other agencies.

(e) The legislature may appropriate money to pay the commission's costs in providing records storage services for an agency:

(1) to the commission; or

(2) to the agency, which shall pay the commission its costs as the services are provided.

(f) In this section, "agency" means a state executive, judicial, or legislative department, institution, board, or commission, including an eleemosynary institution.

Subchapter B. **Archives Of Certain Agencies.**

Sec. 441.021. **Archives of General Land Office.** [70th Leg., 1987]

(a) Any papers, including any book, transfer, power of attorney, field note, map, plat, legal proceeding, official report, or original document, that pertain to the land of the Republic or State of Texas and that have been deposited or filed in the General Land Office in accordance with any law of the republic or of this state are considered to be papers of and constitute a part of the archives of the General Land Office.

(b) A person owning land between the Nueces River and the Rio Grande under a grant or title from the former government that was issued before November 13, 1835, and, before the adoption of the constitution, was recorded in the county in which the land is situated but that has not been

deposited or archived in the General Land Office shall deposit and archive the grant or title in the General Land Office. The act of archiving does not invest the title or grant with any greater validity than it had as a title or grant recorded in the proper county, and it is subject to any defense or objection to which it would have been subject if not so archived. The commissioner of the General Land Office shall receive the title or grant as an archive of the General Land Office.

(c) The commissioner of the General Land Office shall procure, accept, and file in the General Land Office the original papers relating to the survey of lands by virtue of certificates issued by the State of Texas to the Texas & Pacific Railway Company and its predecessors in title, including the maps, sketches, reports, and other papers that were drawn by the surveyors in making the original or corrected surveys of the land and that are in the custody of the railway company. If the commissioner cannot procure the original papers, the commissioner may procure, accept, and file verified copies. The commissioner shall verify the authenticity of the papers. If the commissioner can procure only a portion of the originals, the commissioner shall procure and accept that portion and take and file verified copies of those originals the commissioner cannot procure. The original papers or verified copies filed by the commissioner are archives in the General Land Office and are admissible in evidence as are other papers, documents, and records and certified copies of the office.

(d) This section does not give any papers named in this section any greater force or validity, because of being recognized as archives of the General Land Office, than was accorded the papers by the laws in force at the date of their execution and deposit in the General Land Office.

(e) A written instrument, including a deed, that was executed or issued before March 2, 1836, on stamped paper of the second or third seal and that is not an original document in the General Land Office nor expressly declared by law to be an archive of that office does not constitute a part of the archives of the office. An owner of land to which the instrument relates may withdraw the instrument from the General Land Office on making a written, sworn application for the instrument to the commissioner. The application must state the fact of ownership of the land to which the instrument relates. If the commissioner is satisfied that the person applying is the owner, the commissioner may deliver the instrument to the applicant. The commissioner shall take a receipt for the instrument that describes the instrument delivered, summarizes its contents, and names the original grantee of the land to which the instrument relates or refers.

Sec. 441.022. **Archives of Office of Secretary of State.** [70th Leg., 1987]

(a) The archives of the Congress of the Republic of Texas and of the legislatures of this state, arranged and filed according to law, and the records, books, and journals of the congress and legislatures, prepared in accordance with law and deposited in the office of the secretary of state, are the archives of that office.

(b) The secretary of state may use rooms in the basement of the Capitol for the better preservation of archives.

Sec. 441.023. **Archives of Comptroller's Office.** [70th Leg., 1987]

Any paper or record, including any book or archive that was an archive of the auditor's office or of the office of the commissioner of the court of claims and that was delivered to the comptroller in accordance with law, is considered a paper or record of the comptroller's office and constitutes a part of the archives of that office.

Sec. 441.024. **Archives of Executive Departments.** [70th Leg., 1987]

Any papers, including any book, record, roll, document, return, report, or list required by law to be kept, filed, or deposited in any office of an executive department of this state, constitute a part of the archives of that office.

Sec. 441.025. **University Archives.** [70th Leg., 1987]

(a) The librarian of The University of Texas and the archivist of the department of history of the university may make a certified copy of any public record in the custody of the university. The certified copy is valid in law and has the same force and effect for all purposes as if certified by the county clerk or other custodian as provided by law.

(b) In making a certificate to a certified copy, the librarian or archivist shall certify that the copy is a true and correct copy of the document and, after signing the certificate, shall swear to that fact before an officer authorized to take oaths under the laws of this state.

Sec. 441.026. **Loan of Archives.** [70th Leg., 1987; Amended 71st Leg., 1989]

A custodian of government records, except for a custodian of local government records, may lend to the library of The University of Texas, for the length of time and on the conditions the custodian determines, any part of the custodian's archives or records that are of mainly historical value. The custodian shall take a receipt for the archive or record from the librarian of the university. The librarian may give a receipt for any archive or record transferred to the library and may make a copy for historical study.

Subchapter C. **Records Management Division Of Texas State Library.**

Sec. 441.031. **Definitions.** [70th Leg., 1987; Amended 71st Leg., 1989]

In this subchapter:

(1) "Department or institution" means any executive, educational, judicial, or eleemosynary state department, institution, board, or commission.

(2) "Head of department or institution" means any appointive or elective official with authority over the records of the department or institution.

(3) "Local government" means a county, municipality, public school district, appraisal district, or any other special-purpose district or authority. The term includes all offices, departments, divisions, programs, commissions, bureaus, boards, or similar entities of those governments and includes, with regard to county government, all county, district, and precinct offices.

(4) "Photographic reproduction" means reproduction by any photographic process and includes reproduction by microprint or by microphotography on film and a positive or negative copy.

(5) "State record" means a document, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristic, made or received by a state department or institution according to law or in connection with the transaction of official state business. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes, an extra copy of a document preserved only for convenience of reference, or a stock of publications or of processed documents.

Sec. 441.032. **General Powers and Duties of Division.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) The Texas State Library and Archives Commission may establish and maintain a records management division in the state library.

(b) The division shall:

(1) manage all state records with the cooperation of the heads of the various departments or institutions in charge of the records; and

(2) operate a photographic laboratory to make photographs, microphotographs, or reproductions on film or to arrange for all or any part of the work to be done by an established commercial agency that meets the specifications established by this section for the proper accomplishment of the work.

Sec. 441.033. **Director of Division.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) The commission shall appoint an assistant to serve as the director of the records management division.

(b) To be eligible for appointment as director, a person must have appropriate training and experience in the field of government records management.

Sec. 441.034. **Classification of Records.** [70th Leg., 1987; Amended 71st Leg., 1989]

Under the direction of the records management division and with the cooperation of the heads of departments and institutions, the state records of the departments or institutions shall be surveyed, indexed, and classified.

Sec. 441.035. **Destruction of Records.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) The director and librarian may transfer, destroy, or otherwise dispose of a state record that has been consigned by law to the custody of the director and librarian, that is more than 10 years old, and that the director and librarian determines to be valueless or of no further use to the state as an official record if the comptroller, state auditor, and attorney general agree with the director and librarian that the preservation of the record is not necessary as evidence and will serve no useful purpose in the future efficient operation of state government. Any record disposed of as agreed must be generally listed and referred to, and each official shall consent to the disposition by subscribing to the list.

(b) The director and librarian may destroy a record of a local government that has been transferred or consigned by law to the custody of the director and librarian if the retention period for the record has expired in a records retention schedule approved according to law. If the record does not appear on a records retention schedule, it may be destroyed if in the judgment of the director and librarian it does not have sufficient historical value to merit retention. An original record of a local government in the custody of the director and librarian may be destroyed before the expiration of its retention period if it is microfilmed or duplicated on electronic media and the microfilm or electronic media meets standards established by the Texas State Library and Archives Commission under Section 204.004 or 205.003, Local Government Code. A notice of the destruction of the records shall be filed among the records of the state library.

(c) Any state record that the director and librarian, comptroller, state auditor, or attorney general considers necessary to preserve may be preserved by microfilming the record if funds are appropriated by the legislature to cover the cost of microfilming for the state or are otherwise available for that purpose. Once microfilmed, an original record may be disposed of in a manner agreed on by the officials. The microfilm copy constitutes an original for all legal purposes.

(d) A state record determined to be no longer needed for the operation of state government or replaced by microfilm copy may be transferred to the archives division of the state library if the director and librarian considers the record to be of historical value.

(e) With the approval of the director and librarian, in accordance with this section, the head of any department or institution may destroy any state record in the custody of the head of the department or institution that, in the opinion of the head of the department or institution, does not have any further legal, administrative, or historical value. Before destroying the state record, the head of the department or institution must file an application to do so with the director and librarian that describes the original purpose and the contents of the state record. In addition, the approval of the state auditor is required in the case of the destruction of a state record of a fiscal or financial nature before the

expiration of the retention period recommended for that class of records by the director and librarian in consultation with the state auditor.

Sec. 441.036. **Destruction of Certain Agencies' Records.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) An agency listed in Subsection (b) shall:

(1) examine all its books, papers, correspondence, or records dated earlier than 1952 and stored with the records management division;

(2) classify and index its records;

(3) furnish the records management division with a copy of the index that includes a list of records to be preserved;

(4) name a retention period on each record to be stored for a definite time; and

(5) request destruction of any worthless record or material as provided by Section 441.035(d).

(b) This section applies to the state auditor, State Board of Barber Examiners, General Services Commission, Texas Cosmetology Commission, Texas State Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents, Texas State University System, Texas Department of Licensing and Regulation, comptroller of public accounts, Court of Appeals for the Third Court of Appeals District, governor, Texas Department of Health, Texas Department of Insurance, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission of Texas, Texas Real Estate Commission, secretary of state, State Securities Board, Teacher Retirement System of Texas, Central Education Agency, Texas State Library, Texas Natural Resources Conservation Commission, and the state treasury department.

Sec. 441.037. **Duties of Head of Department or Institution Regarding Records.** [70th Leg., 1987; Amended 71st Leg., 1989]

The head of any department or institution shall:

(1) establish and maintain an active, continuing program for the economical and efficient management of the records of the department or institution;

(2) make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the department or institution designed to furnish information to protect the legal and financial rights of the state and of any person directly affected by activities of the department or institution;

(3) submit to the director of the records management division, in accordance with standards established by the director, schedules proposing the length of time after being adopted or received by the department or institution each state records series should be retained for administrative, legal, or fiscal purposes;

(4) submit a list of any state records in the custody of the head of the department or institution that do not have sufficient administrative, legal, or fiscal value to warrant retention and that are to be disposed of in accordance with Section 441.035; and

(5) act as or appoint an employee of the department or institution performing other administrative duties to act as a records administrator of the department or institution and, in that role, to comply with the rules, standards, and procedures issued by the director of the records management division.

Sec. 441.038. **Photographic Reproductions.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) On request of the head of a department or institution, or on the director and librarian's own initiative with the consent of the head of the department or institution, the director and librarian may provide for making photographic reproductions of the state records of the department or institution. State records are open to the director and librarian for that purpose.

(b) Any photographic reproduction of a state record made by microprint or by microphotography on film must comply with the minimum standards of quality approved for permanent photographic records by the National Bureau of Standards.

(c) Any device used to reproduce a state record must accurately reproduce the original record in detail.

(d) The director and librarian may make photographic reproductions for public use as follows:

(1) free of charge for official use of a department or institution;

(2) for a fee to cover costs for official use of a local government; or

(3) for standard commercial rates fixed by the director and librarian for private use.

(e) Any money the state library receives in payment for charges for photographic reproduction shall be deposited in the state treasury.

(f) A state official may designate a photographic reproduction of a state record in the officer's office as an original record for all legal purposes, even though the record is current. The officer may transfer the replaced record to the director and librarian, who shall issue a receipt for the record. The director and librarian may further transfer or destroy the transferred record. Copies, in any form, of a photographic reproduction that has been designated an original record and certified or authenticated according to the law may be introduced in evidence.

Sec. 441.039. **Auditor Reports On Records.** [70th Leg., 1987; Amended 71st Leg., 1989]

The state auditor may include in an audit report of a state agency:

(1) the degree to which an agency has complied with record disposal instructions and transfer agreements to reduce filing space and equipment required to store records;

(2) the date on which records last were reviewed for transfer or disposal; and

(3) any revisions required in scheduled transfer and disposal dates.

Subchapter D. **Preservation Of Essential Records.**

Sec. 441.051. **Short Title.** [70th Leg., 1987]
This subchapter may be cited as the Preservation of Essential Records Act.

Sec. 441.052. **Definitions.** [70th Leg., 1987]
In this subchapter:
(1) "Agency" means a state executive, judicial, legislative, or eleemosynary department, institution, board, or commission.
(2) "Departmental records supervisor" means a person having authority over a department's records.
(3) "Disaster" means a natural or man-made occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property in this state.
(4) "Essential record" means written or graphic material that is made or received by an agency in the conduct of official state business and that is filed or intended to be preserved permanently or for a definite period as a record of that business.
(5) "Preservation duplicate" means a copy of an essential record used to preserve the record.

Sec. 441.053. **Records Management Interagency Coordinating Council.** [70th Leg., 1987; Amended 74th Leg., 1995]
(a) The Records Management Interagency Coordinating Council is composed of each of the following officers or the officer's designee:
(1) the secretary of state;
(2) the state auditor, who serves as a nonvoting member;
(3) the comptroller of public accounts;
(4) the attorney general;
(5) the director and librarian;
(6) the executive director of the General Services Commission; and
(7) the executive director of the Department of Information Resources.
(b) The position of presiding officer rotates among the members of council. A term as presiding officer is two years and expires on February 1 of each odd-numbered year.
(c) Service on the council is an additional duty of a member's office or employment. A member of the council is not entitled to compensation for performing the work of the council but is entitled to reimbursement for actual expenses incurred in performing that work.
(d) The council is subject to the open meetings law, Chapter 551.
(e) The council's member agencies shall provide the staff for the council.
(f) The council shall:
(1) review the activities of each member agency that affect the state's management of records;
(2) study other records management issues; and
(3) report its findings and any recommended legislation to the governor and the legislature not later than November 1 of each even-numbered year.
(g) The council shall adopt policies that coordinate the activities of each member agency and that make other improvements in the state's management of records. The council shall adopt policies under this subsection using the rule-making procedures prescribed by Chapter 2001.
(h) Each member agency shall adopt the policies adopted under Subsection (g) as the member agency's own rules, except to the extent that the policies conflict with other state or federal law.
(i) Each member agency shall report on its adoption and implementation of rules under Subsection (h) to the council not later than October 1 of each even-numbered year.
(j) In this section, "member agency" means each state officer who is a member of the council or an agency that has a representative who is a member of the council.

Sec. 441.054. **Records Preservation Officer** [70th Leg., 1987]
The director of the records management division is the records preservation officer. The records preservation officer shall adopt rules concerning the selection and preservation of essential records as necessary and proper to carry out the purpose of this subchapter.

Sec. 441.055. **Bond.** [70th Leg., 1987]
The director and librarian and the records preservation officer each shall execute and file with the secretary of state a good and sufficient bond, payable to the state, in an amount set by the committee consistent with the person's duties, and conditioned on the faithful performance of those duties.

Sec. 441.056. **Categories of Essential Records.** [70th Leg., 1987]
Essential records in the following categories shall be preserved:
(1) Category A--Records containing information necessary to the operation of government in an emergency created by a disaster; and
(2) Category B--Records to protect the rights and interests of individuals or to establish and affirm the powers and duties of government in the resumption of operation after a disaster.

Sec. 441.057. **Selection of Records.** [70th Leg., 1987]
(a) Each agency shall select the state records that are essential to carry out its work and shall determine the category of each record.
(b) Each departmental records supervisor, according to the rules adopted by the records preservation officer, shall:
(1) inventory the state records in the departmental records supervisor's custody or control;
(2) submit to the records preservation officer a report on the inventory containing, in addition to the information

required by the rules, specific information showing which records are essential; and

(3) periodically review the inventory and report and if necessary revise the report so that it is current, accurate, and complete.

Sec. 441.058. **Preservation Duplicates.** [70th Leg., 1987]

(a) The records preservation officer shall make preservation duplicates or shall designate as preservation duplicates existing copies of essential state records. A preservation duplicate made by means of photography, microphotography, photocopying, or microfilm must be made according to standards that the records preservation officer prescribes in conformity with the rules of the United States Bureau of Standards.

(b) A preservation duplicate made by a process that accurately reproduces or forms a durable medium for accurately reproducing the original record has the same force and effect for all purposes as the original record, regardless of whether the original record exists. A transcript, exemplification, or certified copy of such a preservation duplicate is for all purposes a transcript, exemplification, or certified copy of the original record.

Sec. 441.059. **Storage.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) The records preservation officer shall prescribe the place and manner of safekeeping of essential records or preservation duplicates and shall establish storage facilities for the records and duplicates. At least one copy of each essential record and a duplicate state seal shall be stored in the safest possible location in facilities constructed to withstand blast, fire, water, and other destructive forces. The facilities must be in a place other than the legally designated or customary storage location for the records or duplicates. The records preservation officer shall properly maintain essential records and preservation duplicates that the records preservation officer stores.

(b) The regularly designated custodian of an agency record or preservation duplicate stored by the records preservation officer may recall the record or duplicate for temporary use as necessary for the proper conduct of an agency. The custodian shall return the record or duplicate to the records preservation officer immediately after the use.

(c) On request of the regularly designated custodian of an essential record stored by the records preservation officer, the records preservation officer shall provide the record for inspection or the making of certified copies. Copies certified by the records preservation officer have the same force and effect as if certified by the regularly designated custodian.

Sec. 441.060. **Confidentiality.** [70th Leg., 1987]

The departmental records supervisor shall label as confidential a state record that is required by law to be treated in a confidential manner. The records preservation officer and the officer's staff shall protect the confidential nature of a labeled record. An employee who fails in this responsibility shall be dismissed from the employee's duties and may not hold another state appointment.

Sec. 441.061. **Review.** [70th Leg., 1987]

At least once every two years the records preservation officer and the committee shall review the entire program established by this subchapter.

Sec. 441.062. **State Auditor's Report of Compliance.** [70th Leg., 1987; Amended 72nd Leg., 1991]

In the audit of an agency the state auditor may report on the agency's compliance with this subchapter.

Subchapter F. **Maintenance And Disposition Of Certain County Records.**

Sec. 441.091. **Definitions.** [70th Leg., 1987; Amended 74th Leg., 1995]

In this subchapter:

(1) "County record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a county or precinct or any county or precinct officers or employees, including the district clerk, pursuant to law, including an ordinance or order of the commissioners court of the county, or in the transaction of public business. The term does not include:

(A) extra identical copies of documents created only for convenience of reference or research by county or precinct officers or employees;

(B) notes, journals, diaries, and similar documents created by a county or precinct officer or employee for the officer's or employee's personal convenience;

(C) blank forms;

(D) stocks of publications;

(E) library and museum materials acquired solely for the purposes of reference or display; or

(F) copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552 or other state law.

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Sec. 441.094. **Records Schedule and Implementation Plan.** [70th Leg., 1987; Amended 71st Leg., 1989]

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(b) A records schedule must:

(1) contain a list by record title of the county records to be scheduled; and

(2) prescribe a minimum retention period for each record that is at least as long as that prescribed by law or the county records manual or state that a retention period for the record will be assigned later.

(c) A records schedule may:

(1) contain a list of all of the county records kept by the custodian or a list of only those records to be scheduled; and

(2) contain a list of material that is excluded from the definition of county record by Section 441.091 and that is kept by the custodian, with retention periods assigned by the custodian.

(d) A custodian may amend a records schedule or implementation plan.

(e) A records schedule, implementation plan, or amendment takes effect when the custodian files a copy of the schedule, plan, or amendment in the office of the county clerk and with the director and librarian.

Sec. 441.0945. **Disposition of Scheduled Records.** [71st Leg., 1989]

(a) A county record may be destroyed if the record is listed on the records schedule and implementation plan accepted for filing by the director and librarian and either its retention period has expired or it has been microfilmed or stored electronically in accordance with applicable law.

(b) The director and librarian or a person on the staff of the director and librarian may reject the records schedule and implementation plan for a record if the retention period of the record as listed on the plan is less than the retention period for the record established by the county records manual. If the plan is rejected, the director and librarian or staff person shall file with the custodian the rejected schedule and a statement of the reasons for rejection not later than the 30th day after the date the director and librarian or staff person received the records schedule and implementation plan. If a schedule is rejected under this subsection, the custodian may submit an amended schedule.

(c) The director and librarian or a person on the staff of the director and librarian may condition acceptance of the records schedule and implementation plan on the transfer of a record listed on the schedule to the custody of the Texas State Library when the retention period for the record has expired.

Sec. 441.095. **Disposition of Unscheduled Records.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) A custodian may dispose of a county record that is not listed on an approved records schedule and implementation plan if, not later than 60 days before the date that the record is destroyed, the custodian gives written notice of the intent to destroy the record to the director and librarian. The notice must sufficiently describe the record to enable the director and librarian to determine if the record has been assigned a minimum retention period.

(b) Not later than the 30th day after the date the director and librarian receives the notice, the director and librarian shall:

(1) notify the custodian of the approval or disapproval of the intended disposition;

(2) request any additional information required by the director and librarian to evaluate the record; or

(3) request that the record or a part of the record be transferred to the Texas State Library for preservation in a regional historical resource depository.

(c) The custodian shall comply with the request or notice of the director and librarian or withdraw the notice of intent to destroy the record.

(d) Not later than the 10th day before the date a record is destroyed, the custodian shall file and record a notice with the county clerk. The notice must indicate the record to be destroyed, how it is to be destroyed, and the date of its destruction. On the day the notice is filed, the county clerk shall post a copy of it in the same manner that a notice of a meeting is posted under Chapter 551.

(e) The custodian may destroy the record at any time after the director and librarian has approved the destruction and the notice required by Subsection (d) has been posted for 10 days by the county clerk.

(f) A county record may be destroyed only by sale or donation for recycling purposes, shredding, burning, burial in a landfill, or pulping.

(g) A person is not civilly liable for destruction of a record in accordance with this subchapter.

Subchapter G. **State Publications.**

Sec. 441.101. **Definitions.** [70th Leg., 1987; Amended 74th Leg., 1995]

In this subchapter:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Depository library" means the Texas State Library, the Legislative Reference Library, the Library of Congress, the Center for Research Libraries, or any other library that the commission designates as a depository library.

(3) "State agency" means a state office, officer, department, division, bureau, board, commission, legislative committee, authority, institution, substate planning bureau, university system, institution of higher education as defined by Section 61.003, Education Code, or a subdivision of one of those entities.

(4) "State publication":

(A) means information in any format that:

(i) is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency; and

(ii) is publicly distributed outside the agency by or for the agency; and

(B) does not include information the distribution of which is limited to:

(i) contractors with or grantees of the agency;

(ii) persons within the agency or within other government agencies; or

(iii) members of the public under a request made under the open records law, Chapter 552.

Sec. 441.102. **Distribution of State Publications.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission by rule shall establish procedures for the distribution of state publications to depository libraries and for the retention of those publications.

(b) The commission may enter into a contract with a depository library under which the depository library receives all or part of the state publications that are distributed.

(c) The commission shall establish a system to allow electronic access at the Texas State Library and other depository libraries to state publications in an electronic format that have been made available to the public by or on behalf of a state agency.

*[Note: The Act amending §441.102 states that: "(a) The Texas State Library and Archives Commission, in establishing the system...for public electronic access...to state publications that are in an electronic format, shall: (1) phase in the system over a four-year period beginning September 1, 1995; and (2) establish the system using existing state agency electronic networks to the greatest extent possible to minimize the cost of establishing the system. (b) State agencies shall cooperate with the commission in establishing the system."]*

Sec. 441.103. **State Agency Duties.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) A state agency shall designate one or more staff persons as agency publications contact persons and shall notify the Texas State Library of those persons' identities. A publications contact person shall maintain a record of the agency's state publications and shall furnish to the Texas State Library a list of the agency's new state publications as they become available.

(b) A state agency shall furnish its state publications to the Texas State Library in the number specified by commission rules. On the printing of or awarding of a contract for the printing of a publication, a state agency shall arrange for the required number of copies to be deposited with the Texas State Library. The commission may not require more than 75 copies of a printed state publication.

(c) On the release of a state publication in an electronic format and for the purpose of further distribution of the publication, a state agency shall provide the Texas State Library:

(1) on-line access to the publication; or

(2) copies of the publication on an electronic external storage device in the number of copies prescribed by the commission but not to exceed 75.

(d) If a state agency is allowing public on-line access to a state publication, the agency shall also provide the Texas State Library with at least one free on-line connection to the agency's state publications that can be accessed on-line. The connection must:

(1) be provided in the form and manner prescribed by the director and librarian; and

(2) be compatible with applicable standards prescribed by the Department of Information Resources.

Sec. 441.104. **Duties of Texas State Library.** [70th Leg., 1987; Amended 74th Leg., 1995]

The Texas State Library shall:

(1) acquire, organize, and retain state publications;

(2) collect state publications and distribute them to depository libraries;

(3) establish a microform program for the preservation and management of state publications and make available state publications in microform to depository libraries and other libraries at a reasonable cost;

(4) periodically issue a list of all state publications that it has received to all depository libraries and other libraries on request;

(5) catalog, classify, and index all state publications that it receives and distribute the cataloging, classification, and indexing information to depository libraries and to other libraries on request; and

(6) ensure that state publications are fully represented in regional and national automated library networks;

(7) index all state publications that are available in an electronic format and make the index available in an electronic format;

(8) provide on-line access to state publications that can be accessed on-line; and

(9) provide other depository libraries appropriate access, at no charge, to state publications available in an electronic format.

Sec. 441.105. **Exempt Publications.** [70th Leg., 1987; Amended 74th Leg., 1995]

The state librarian may specifically exempt a publication or a distribution format from this subchapter.

Sec. 441.106. **Payment for Printing of State Publications.** [70th Leg., 1987]

If a state agency's printing is done by contract, an account for the printing may not be approved and a warrant may not be issued unless the agency first furnishes to the State Purchasing and General Services Commission a receipt from the state librarian for the publication or a written waiver from the state librarian exempting the publication from this subchapter.

Subchapter I. **Library Systems.**

Sec. 441.121. **Short Title.** [70th Leg., 1987]

This subchapter may be cited as the Library Systems Act.

Sec. 441.122. **Definitions.** [70th Leg., 1987; Amended 74th Leg., 1995]

In this subchapter:

(1) "Accreditation of libraries" means the evaluation and rating of public libraries and library systems, and the evaluation and rating of libraries that are operated by a public

school district, institution of higher education, or unit of state or local government but that are not public libraries, according to commission accreditation standards.

(2) "Accreditation standards" means the criteria established by the commission that a library must meet to be accredited and eligible for membership in a major resource system.

(3) "Area library" means a medium-sized public library serving a population of 25,000 or more that has been designated as an area library by the commission and is a member of a library system interrelated to a major resource center.

(4) "Commission" means the Texas State Library and Archives Commission.

(5) "Community library" means a small public library serving a population of less than 25,000 that is a member of a library system interrelated to a major resource center.

(6) "Governing body" means the body having power to authorize a library to join, participate in, or withdraw from a library system.

(7) "Interlibrary contract" means a written agreement between two or more libraries to cooperate, consolidate, or receive one or more services.

(8) "Library board" means the body that has the authority to give administrative direction or advisory counsel to a library or library system.

(9) "Library system" means two or more public libraries cooperating in a system approved by the commission to improve library service and to make their resources accessible to all residents of the area the libraries serve.

(10) "Major resource center" means a large public library serving a population of 200,000 or more within 4,000 or more square miles that is designated as the central library of a major resource system for referral service from area libraries in the system, for cooperative service with other libraries in the system, and for federated operations with other libraries in the system.

(11) "Major resource system" means a network of library systems attached to a major resource center, consisting of area libraries joined cooperatively to the major resource center, community libraries joined cooperatively to area libraries or directly to the major resource center, and libraries that are not public libraries that join the system under Section 441.1271.

(12) "Public library" means a library that is operated by a single public agency or board, that is freely open to all persons under identical conditions, and that receives its financial support in whole or part from public funds.

(13) "Regional library system" means a network of library systems established under this subchapter. Notwithstanding other provisions of this subchapter, libraries operated by public school districts, institutions of higher education, and units of state or local government may become members of a regional library system to make the library resources freely accessible to all residents of the system.

(14) "State library system" means a network of library systems, interrelated by contract, for the purpose of organizing library resources and services for research, information, and recreation to improve statewide library service and to serve collectively the entire population of the state.

Sec. 441.123. **Establishment of State Library System.** [70th Leg., 1987]

The commission shall establish and develop a state library system.

Sec. 441.124. **Advisory Board.** [70th Leg., 1987]

(a) The commission shall appoint an advisory board composed of five librarians qualified by training, experience, and interest to advise the commission on the policy to be followed in applying this subchapter.

(b) The term of office of a board member is three years.

(c) The board shall meet at least once a year. The commission may call other meetings during the year.

(d) A member of the board serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(e) A vacancy shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

(f) A member may not serve more than two consecutive terms.

Sec. 441.125. **Plan of Service.** [70th Leg., 1987]

The director and librarian shall submit an annual plan for the development of the state library system for review by the advisory board and approval by the commission.

Sec. 441.126. **Authority to Establish Major Resource Systems.** [70th Leg., 1987; Amended 73rd Leg., 1993]

The commission may establish and develop major resource systems or regional library systems in conformity with the plan for a state library system as provided by this subchapter.

Sec. 441.127. **Membership in System.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) To be eligible for membership in a major resource system or regional library system a library must be accredited by the commission as having met the accreditation standards established by the commission.

(b) To meet population change, economic change, and changing service strengths of member libraries, a major resource system may be reorganized, merged with another major resource system, or partially transferred to another major resource system by the commission with the approval of the majority of the appropriate governing bodies of the libraries comprising the system. A regional library system may be reorganized, divided, dissolved, or merged into another regional library system in a manner provided by bylaws of the corporation operating the system or by contract between the member libraries and the managing authority of the system.

(c) The governing body of a public library that proposes to become a major resource center shall submit to the director and librarian an initial plan of service for the major resource system and annually after the library becomes a major resource center shall submit a plan of system development made in consultation with the advisory council.

Sec. 441.1271. **Extending Membership of Major Resource Systems to Certain Nonpublic Libraries.** [74th Leg., 1995]

(a) A major resource system may extend its membership to include libraries that are not public libraries and that are operated by one of the following:

(1) a public school district;

(2) an institution of higher education;

(3) a unit of state government; or

(4) a unit of local government.

(b) The decision to extend major resource system membership under Subsection (a) must be:

(1) made on a two-thirds vote of the governing bodies of the members of the major resource system; and

(2) approved by the commission.

(c) A library that is a type of library to which a major resource system has extended its membership under this section:

(1) must be accredited by the commission to be eligible to join the system; and

(2) may join the system by resolution or ordinance of its governing body and execution of interlibrary contracts for service.

(d) The commission may terminate the system membership of a library that is not a public library and that joined a major resource system under this section if the library:

(1) loses its accreditation by ceasing to meet the minimum standards established by the commission; or

(2) fails to comply with obligations stated in the applicable resolution or ordinance or interlibrary contracts for service.

(e) A library that is not a public library that joins a major resource system under this section must provide benefits to the public through its membership in the system that are sufficient to constitute fair value in exchange for the benefits received by the library through its membership in the system.

(f) A major resource system that has extended its membership to some but not all of the types of libraries described by Subsection (a) may extend its membership to one or more of the remaining types of libraries described by Subsection (a). A decision under this subsection must be made and approved in the manner prescribed for a decision under Subsection (b).

Sec. 441.128. **Operation and Management.** [70th Leg., 1987]

(a) Governing bodies within a major resource system area or regional library system area may join in the development, operation, and maintenance of the system and appropriate and allocate funds for its support.

(b) Governing bodies of political subdivisions of the state may negotiate separately or collectively a contract with the governing bodies of member libraries of a major resource system or regional library system for all library services or for those services defined in the contract.

(c) On petition of 10 percent of the persons qualified to vote in the most recent general election of a county or municipality within a major resource system service area or a regional library system service area, the governing body of that political subdivision shall call an election to vote on the question of whether or not the political subdivision shall establish contractual relationships with the system.

(d) The governing body of a major resource center, the governing body or managing authority of a regional library system, and the commission may enter into agreements with the governing bodies of other libraries, including other public libraries, school libraries and media centers, academic libraries, technical information and research libraries, or systems of those libraries, to provide or receive specialized resources and services. The commission shall coordinate and encourage the dissemination of specialized resources and services and may adopt rules for the contracts and agreements authorized by this subsection.

Sec. 441.129. **Withdrawal From System.** [70th Leg., 1987]

(a) The governing body of a political subdivision of the state may by resolution or ordinance withdraw from a major resource system. The governing body must give notice of withdrawal not later than the 90th day before the end of the state fiscal year.

(b) The provision for termination of all or part of a major resource system does not prohibit revision of the system by the commission, with the approval of the majority of the appropriate governing bodies, by reorganization, by transfer of part of the system, or by merger with other systems.

Sec. 441.130. **Advisory Council.** [70th Leg., 1987]

(a) Each major resource system has an advisory council composed of six lay members representing the member libraries of the system.

(b) The governing body of each member library of the system shall elect or appoint a representative to elect council members. The representatives shall meet following their selection and shall elect the initial council from their group. The representatives in an annual meeting shall elect members of their group to fill council vacancies caused by expiration of terms of office. Other vacancies shall be filled for the unexpired term by the remaining members of the council. At all times one member of the council must be a representative of the major resource center.

(c) The term of office of a council member is three years, except that the initial members shall draw lots for terms, two to serve one-year terms, two to serve two-year terms, and two

to serve three-year terms. An individual may not serve more than two consecutive terms.

(d) The council shall elect a chairman, vice-chairman, and secretary.

(e) The council shall meet at least once a year. Other meetings may be held as often as is required to transact necessary business. The council shall report business transacted at each meeting to all member libraries of the system.

(f) The members of the council serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties.

(g) The council shall serve as a liaison agency between the member libraries and their governing bodies and library boards to:

(1) advise in the formulation of the annual plan for service to be offered by the system;

(2) recommend policies appropriate to services needed;

(3) evaluate services received;

(4) counsel with administrative personnel; and

(5) recommend functions and limitations of contracts between cooperating agencies.

(h) The functions of the advisory council do not diminish the powers of a local library board.

Sec. 441.131. **Regional Library System**. [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) The governing bodies of two-thirds of the member libraries of a major resource system may elect, for the purpose of administering the receipt and dispersal of services under this subchapter within their area, to form a regional library system that includes all libraries that are members of the major resource system.

(b) Governing bodies of libraries within a regional library system may establish a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to administer the system or may contract with a private business to administer the system. If the governing bodies form a nonprofit corporation, they may select a board of directors and adopt bylaws for the corporation. Bylaws adopted or a contract executed under this section may permit other libraries operated by public school districts, institutions of higher education, and units of state or local government to become members of the regional library system. Bylaws may provide for reorganization, merger, division, and dissolution.

Sec. 441.132. **Major Resource Centers.** [70th Leg., 1987]

(a) The commission may designate major resource centers from existing public libraries according to criteria approved by the commission and agreed to by the governing body of the library involved. The governing body of a library designated as a major resource center may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(b) The commission may revoke the designation of a major resource center that ceases to meet the criteria for a major resource center or that fails to comply with obligations stated in the resolution or ordinance agreements. The commission shall provide a fair hearing on request of the major resource center.

(c) Funds allocated by governing bodies contracting with the major resource center and funds contributed from state grants for the purposes of this subchapter shall be deposited with the governing body operating the major resource center following procedures agreed to by the contributing agency.

(d) The powers of the governing board of the major resource center do not diminish the powers of local library boards.

Sec. 441.133. **Area Libraries**. [70th Leg., 1987]

(a) The commission may designate area libraries within each major resource system service area to serve the surrounding area with library services for which interlibrary contracts are made with participating libraries. Area libraries may be designated only from existing public libraries and on the basis of criteria approved by the commission and agreed to by the governing body of the library involved. The governing body of a library designated as an area library may accept the designation by resolution or ordinance stating the type of service to be given and the area to be served.

(b) The commission may revoke the designation of an area library that ceases to meet the criteria for an area library or fails to comply with obligations stated in the resolution or ordinance agreement. The commission shall provide a fair hearing on request of the major resource center or area library.

(c) Funds allocated by governing bodies contracting with the area library and funds contributed from state grants for the purposes of this subchapter shall be deposited with the governing body operating the area library following procedures agreed to by the contributing agency.

Sec. 441.134. **Community Libraries**. [70th Leg., 1987]

(a) Community libraries accredited by the commission are eligible for membership in a major resource system. A community library may join a system by resolution or ordinance of its governing body and execution of interlibrary contracts for service.

(b) The commission may terminate the membership of a community library in a system if the community library loses its accreditation by ceasing to meet the minimum standards established by the commission or fails to comply with obligations stated in the resolution or ordinance agreement.

Sec. 441.135. **Grants.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commission shall establish a program of state grants within the limitations of funds appropriated by the legislature. The commission shall adopt by rule the guidelines for awarding grants, except that any municipal library which lends more than 20,000 items per year to

nonresidents cannot be denied any grant awarded after January 1, 1995, based solely upon the provision of services to nonresidents.

(b) The program of state grants shall include one or more of the following:

(1) system operation grants, to strengthen major resource system services to member public libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems;

(2) incentive grants, to encourage public libraries to join together into larger units of service in order to meet criteria for major resource system membership or regional library system membership;

(3) establishment grants, to help establish public libraries that will qualify for major resource system membership or regional library system membership in communities without public library service; and

(4) equalization grants, to help public libraries in communities with relatively limited taxable resources to meet criteria for major resource system membership or regional library system membership ; and

(5) public information technology grants, to help public libraries make state, local, and federal government information that is accessible through the Internet or electronic bulletin board systems available to the public through computer terminals at a library.

Sec. 441.136. **Rules.** [70th Leg., 1987]

(a) The director and librarian, with the advice of the advisory board, shall propose initial rules necessary to the administration of the program of state grants, including qualifications for major resource system membership. The proposed rules shall be published in the official publication of the Texas State Library with notice of a public hearing before the commission on the proposed rules to be held on a specified date not less than 30 nor more than 60 days after the date of the publication.

(b) After the public hearing, the commission shall adopt the proposed rules or return them to the director and librarian with recommendations for change. If the commission returns the proposed rules to the director and librarian with recommendations for change, the director and librarian shall consider the recommendations for change in consultation with the advisory board and resubmit the proposed rules to the commission for its adoption.

(c) Revised rules shall be adopted under the same procedure provided in this subchapter for the adoption of the initial rules.

(d) The commission shall include requirements in its rules to ensure that both the population served and the constituent member libraries are adequately represented in the conduct of system business relating to activities involved in the development of a plan of service and adequately represented on each major resource system advisory council. Rules adopted as required by this subsection do not apply to the governing board or board of directors of a regional library system governed by applicable requirements of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(e) The commission shall include in its rules provisions necessary to ensure that title to library materials and equipment that have a cost for each unit of less than $300 and that are purchased with funds appropriated under this subchapter is held by the library for which the materials and equipment were purchased, and that title to materials and equipment that have a cost for each unit of $300 or more is held by the Texas State Library.

Sec. 441.137. **Administration**. [70th Leg., 1987]

The director and librarian shall administer the program of state grants and shall make public the rules adopted by the commission.

Sec. 441.138. **Funding.** [70th Leg., 1987]

(a) The commission may use funds appropriated by the legislature for personnel and other administrative expenses necessary to carry out the provisions of this subchapter.

(b) Libraries and library systems may use state grants for materials, personnel, equipment, administrative expenses, and financing programs that enrich the services and materials offered a community by its public library. State grants may not be used for site acquisition, construction, acquisition of buildings, or payment of past debts.

(c) State aid to a free tax-supported public library is a supplement to and not a replacement of local support.

(d) Twenty-five percent of system operation grants shall be apportioned equally among the major resource systems and regional library systems that are operating under commission-approved programs of services, budgets, and bylaws or contracts, and the remaining 75 percent of these grants shall be apportioned among those systems on a per capita basis determined by the most recent decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census.

Sec. 441.139. **Research Fees for For-Profit Entities.** [73rd Leg., 1993]

(a) Notwithstanding other provisions of this subchapter, a library, including a public library, in a city with a population of 1,000,000 or more and that has adopted a council-manager form of government, may charge a reasonable fee to a for-profit business entity for providing in-depth research services or research support relating to the entity's business activities.

(b) A library may not charge a fee under this section in circumstances under which charging a fee is not allowed by federal law for federal funding purposes.

Subchapter J. **Preservation And Management Of Local Government Records.**

Sec. 441.151. **Definitions.** [71st Leg., 1989; Amended 74th Leg., 1995]

In this subchapter:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Custodian" means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

(3) "Depository" means a regional historical resource depository established under Section 441.153.

(4) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

(5) "Essential record" means any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

(6) "Historical resource" means a book, publication, newspaper, manuscript, paper, document, memorandum, record, map, artwork, photograph, microfilm, sound recording, or other material of historical interest or value, including a local government record of permanent value transferred to the custody of the commission under Subtitle C, Title 6, Local Government Code.

(7) "Local government" means a county, including all district and precinct offices of a county, municipality, public school district, appraisal district, or any other special-purpose district or authority.

(8) "Local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

(A) extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;

(B) notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;

(C) blank forms;

(D) stocks of publications;

(E) library and museum materials acquired solely for the purposes of reference or display; or

(F) copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552, or other state law.

(9) "Permanent record" or "record of permanent value" means any local government record whose retention period on a records retention schedule issued by the commission is given as permanent.

(10) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

(11) "Records management officer" means the person identified under Section 203.001 or designated under Section 203.025, Local Government Code, as the records management officer.

(12) "Research center" means a regional research center established under Section 441.154.

(13) "Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Sec. 441.152. **Duties and Responsibilities of the Director and Librarian.** [71st Leg., 1989]

The director and librarian shall:

(1) carry out the duties and responsibilities of the commission relating to the management and preservation of local government records imposed by this subchapter and Subtitle C, Title 6, Local Government Code;

(2) administer the regional historical depository system and regional research centers the establishment of which is provided for by this subchapter and provide additional assistance through publications and other means to persons wishing to use local government records for historical and other research purposes;

(3) provide assistance, information, and training to records management officers and custodians of local government records in fulfilling their responsibilities under Subtitle C, Title 6, Local Government Code;

(4) work with other state agencies in seeking methods to assist and encourage local governments and the custodians of local government records in the establishment and operation of efficient and economical records management programs, in reducing paperwork required of local governments by the state, and in preserving records of historical value;

(5) establish and administer a clearinghouse for information relating to all aspects of the management and preservation of local government records; and

(6) assist local governments in seeking grants from federal, state, and private foundations, agencies, or organizations for records management and preservation activities.

Sec. 441.153. **Regional Historical Resource Depositories.** [71st Leg., 1989]

(a) To provide for an orderly, uniform statewide system for the professional retention and preservation of historical resources in the region of their origin or interest, the commission may enter into an agreement with a public or private library or archives to serve as a regional historical resource depository.

(b) The commission shall adopt rules that:

(1) establish standards that an institution must meet in order to qualify for designation as a depository;

(2) prescribe procedures for depositing, accessioning, cataloging, storing, transferring, preserving, and providing reference services for historical resources placed in a depository; and

(3) establish other policies as the commission considers necessary to ensure the effective administration of the system of depositories.

(c) An agreement under Subsection (a) may not include any provision that limits the authority of the commission to adopt or amend rules under Subsection (b).

(d) The commission shall determine the region to be served by a depository. An agreement may not limit the authority of the commission to change the boundaries of a region at its discretion.

(e) The commission may place a staff member at a depository to care for historical resources deposited there by the commission and to perform other duties imposed on the commission and the director and librarian by this subchapter and Subtitle C, Title 6, Local Government Code, but an agreement may not limit the power of the commission to transfer a staff member to a duty station at times as it considers advisable.

(f) Title to historical resources placed in a depository by the commission remains with the commission, and the historical resources may not be intermingled with other holdings of the institution that serves as a depository.

Sec. 441.154. **Regional Research Centers.** [71st Leg., 1989]

(a) To provide additional methods for the preservation of the historical resources of the state in the region of their origin or interest and to provide additional methods of carrying out the other responsibilities placed on the commission by this subchapter and Subtitle C, Title 6, Local Government Code, the commission may establish and operate regional research centers in accordance with this section.

(b) The commission may accept on behalf of the state land and buildings that meet criteria established by the commission as suitable sites or buildings for a regional research center.

(c) The commission may solicit, accept, or collect and may administer for any purpose related to the construction, purchase, remodeling, operation, equipping, staffing, and maintenance of a regional research center or for the operation of any other program of the commission relating to the management and preservation of local government records:

(1) federal, state, local government, or private funds made available by grant; or

(2) gifts of money or real or personal property from donors.

(d) If acceptable to the commission, a donor may specify that donated money or property be used for specific purchases or projects related to the purposes described by Subsection (c).

(e) The commission may keep outside the state treasury in a separate bank depository that the commission designates any money collected under Subsection (c). The money is not subject to legislative appropriation and may be used only for the purposes described by Subsection (c).

(f) If real or personal property is donated to and accepted by the commission specifically for the purpose of sale or lease to provide funds for any of the purposes described by Subsection (c), the commission may proceed with the sale or lease. In converting donated property to money, the commission may execute bills of sale, leases, or deeds in consideration of the payment to the commission of the reasonable market value of the property as determined by a licensed or professional appraiser. The instruments of conveyance must be authorized by written resolution of the commission and must be signed by the chairman and attested to by the secretary.

(g) Subject to the terms of the donation and unless provided otherwise by the donor, the commission in action for the state with respect to donated property has the powers of a trustee under Subtitle B, Title 9, Property Code (Texas Trust Code), with the state as the beneficiary and owner of the remainder of the donated property.

(h) The commission may accept gifts or loans of furniture, equipment, artwork, museum pieces, and other historical resources for placement in a specified regional research center under conditions to which the commission and the donor agree.

(i) For the purposes described by Subsection (c), the commission may enter into agreements the commission considers advisable with grantors and donors. The agreements may not create a financial obligation on the part of the state.

(j) The commission may provide out of regular appropriations for the operation, equipping, staffing, and maintenance of a regional research center and may enter into any cooperative agreements it considers advisable with any state agency, county, municipality, or other local government for the purposes described by Subsection (c) in, or through services provided by, a regional research center.

(k) A regional research center established under this section is owned by the state and is under the direct control and supervision of the commission.

(l) The commission shall adopt rules that prescribe procedures for depositing, accessioning, cataloging, storing, transferring, preserving, and providing reference services for historical resources placed in a research center and shall also establish other policies it considers necessary to ensure the effective administration of a research center.

(m) A regional research center is dedicated to the objectives described by Subsection (a) and may not be used for other purposes, but the commission may establish rules governing the use of meeting rooms in a research center for educational purposes.

(n) The commission shall report annually to the governor and the legislature all donations, grants, agreements, and special accounts under this section, and those items are subject to audit by the state auditor.

Sec. 441.155. **Placement and Removal of Resources.** [71st Leg., 1989]

(a) The commission may place any historical resources in its custody in a depository or research center.

(b) Subject only to an agreement under Section 441.154

(i) the commission may remove historical resources in its custody from one depository or research center to another or to the state library in Austin if the commission determines that the removal would ensure the safety, preservation, or availability of the resources.

Sec. 441.156. **Contracting Authority.** [71st Leg., 1989]

(a) The commission may enter into contracts or agreements that it considers necessary or advisable to foster and assist in the development of local government records management programs and the preservation of local government records of permanent value and to carry out its duties and responsibilities under this subchapter and Subtitle C, Title 6, Local Government Code.

(b) No contract or agreement made by the commission may bind the state for the payment of any funds that have not been authorized by an appropriation of the legislature or that are not available in accounts established under Section 441.154(e).

(c) The commission may sell advertising in publications developed pursuant to its duties under this subchapter and Subtitle C, Title 6, Local Government Code, and the commission may spend proceeds from the sale only to carry out those duties. The revenue from the sale shall be deposited in the state treasury to the credit of a special fund and reappropriated to the commission.

Sec. 441.157. **Grant-In-Aid Program.** [71st Leg., 1989]

(a) A program of state grants within the limitations of funds appropriated by the legislature is established for the purpose of aiding local governments in the establishment of records management programs or for the purposes of preserving historically valuable local government records.

(b) The commission shall adopt rules necessary to the administration of the grant program.

(c) The commission may use appropriated funds for personnel and other administrative expenses necessary to carry out the grant program.

(d) The commission shall report annually to the governor and the legislature all grants made under the program.

(e) If the United States Congress enacts legislation to fund a grant-in-aid program for the management or preservation of local government records, and if the legislation provides for the distribution of the funds by a state agency, the commission shall accept and administer the funds unless the federal legislation provides otherwise.

Sec. 441.158. **Local Government Records Retention Schedules.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The director and librarian, under the direction of the commission, shall prepare and distribute free of charge to records management officers of affected local governments the records retention schedules for each type of local government, including a schedule for records common to all types of local government. The commission shall adopt the schedules by rule

(b) Each records retention schedule must:

(1) list the various types of records of the applicable local government;

(2) state the retention period prescribed by a federal or state law, rule of court, or regulation for records for which a period is prescribed; and

(3) prescribe retention periods for all other records, which periods have the same effect as if prescribed by law after the records retention schedule is adopted as a rule of the commission.

(c) In preparing the records retention schedules, the director and librarian shall consult with custodians and other local government officials whose records are affected by the schedules and with appropriate state agencies.

(d) Before the adoption of a records retention schedule by the commission, it must be approved by the local government records committee established under Section 441.161.

(e) After the adoption of a records retention schedule, a retention period for a record prescribed in a new or amended federal or state law, rule of court, or regulation that differs from that in a records retention schedule prevails over that in the schedule.

(f) The initial records retention schedules adopted by the commission under this section must be adopted not later than January 2, 1996. This subsection expires January 5, 1999.

Sec. 441.159. **Prior Retention Periods in County Records Manual.** [71st Leg., 1989]

Retention periods for county records contained in the county records manual or any amendments to the manual approved before September 1, 1989, as provided under prior law are validated and have the same effect as retention periods in a records retention schedule adopted under Section 441.158. Any amendments to retention periods in the manual after September 1, 1989, must be in accordance with Section 441.160.

Sec. 441.160. **Revisions to Records Retention Schedules.** [71st Leg., 1989]

The records retention schedules may be revised and the revisions take effect according to their terms when they are

approved and adopted in the same manner as provided by Section 441.158. However, editorial changes that do not substantively change the description of a record or its retention period and changes to retention periods as the result of changes to retention periods prescribed in a federal or state law, rule of court, or regulation do not require approval of the local government records committee before adoption.

Sec. 441.161. **Local Government Records Committee.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) A local government records committee shall be established to:

(1) review and approve each of the records retention schedules prepared by the director and librarian as provided by Section 441.158;

(2) review and approve certain rules to be considered for adoption by the commission as provided by Section 441.165; and

(3) advise the commission and the director and librarian on all matters concerning the management and preservation of local government records.

(b) In reviewing and approving records retention schedules and rules under this section, each committee member shall consider the costs of implementation and other factors that may affect local governments.

Sec. 441.162. **Composition of the Committee.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The committee includes as ex officio members:

(1) the attorney general or the designee of that officer; and

(2) the comptroller of public accounts or the designee of that officer.

(b) The other members of the committee shall consist of 10 individuals; two of whom represent counties, one of whom must be a county clerk or a district clerk; two of whom represent municipalities; two of whom represent school districts; two of whom represent appraisal districts; and two of whom represent water districts. At least one member must be a records management officer under Chapter 203, Local Government Code, who is not also an elected county officer. At least four members must represent either a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more.

Sec. 441.163. **Appointment of Local Government Records Committee; Compensation.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) Each of the members of the committee, except the ex officio members, shall be appointed by the director and librarian as provided by this section.

(b) On or before the 30th day before the date the director and librarian makes an appointment, the director and librarian shall cause to be published in the Texas Register a notice of the intent to make an appointment.

(c) A nomination for appointment may be made by an organization representing officers or employees of the type to be appointed that has as members at least 50 of those officers or employees. A nomination under this subsection shall include a nominee who represents a county with a population of 10,000 or more and a nominee who represents a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more.

(d) After the 30th day after the date the notice is published under Subsection (b), the director and librarian shall appoint a nominee or shall appoint an officer chosen by the director and librarian, if there are no nominees.

(e) The director and librarian shall appoint members to give representation to all geographical regions of the state.

(f) On or before the 30th day after the date of the appointment of the last committee member under Subsections (a) through (e), the director and librarian shall have a complete list of committee members published in the Texas Register.

(g) Service on the local government records committee by a local government officer or employee is an additional duty of the person's office or employment. A member of the committee may not receive compensation for service on the committee but is entitled to be reimbursed from funds of the commission for actual and necessary expenses incurred on committee business, subject to any limit provided by the General Appropriations Act. Expenses of the attorney general and the comptroller of public accounts or their designees shall be paid from the funds of their respective offices.

(h) The committee members shall elect a presiding officer at the first meeting held by newly appointed or reappointed members after February 1 of an odd-numbered year. The director and librarian shall call that first meeting.

Sec. 441.164. **Term; Qualification; Vacancy.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) Except for the ex officio members, committee members are appointed for two-year terms expiring on February 1 of odd-numbered years.

(b) To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

(c) A vacancy on the committee shall be filled in the same manner as an original appointment.

(d) No two committee members may hold office in or be employed by the same local government.

Sec. 441.165. **Certain Commission Rules.** [71st Leg., 1989; Amended 74th Leg., 1995]

Rules and any revisions to the rules developed under Sections 203.048, 204.004, and 205.003, Local Government Code, must be approved by the local government records committee established under Section 441.161.

Sec. 441.166. **State Agency Rules.** [71st Leg., 1989; Amended 74th Leg., 1995]

A state agency other than the commission, the Texas Supreme Court, or the Texas Court of Criminal Appeals may not require a local government to retain a record for any specific period of time unless the requirements are imposed by federal law or regulation, state law, or rules adopted by the agency under Chapter 2001.

Sec. 441.167. **Statutory Filing and Review.** [71st Leg., 1989]

The director and librarian may designate employees of the commission to act as deputies in the approval or disapproval or acceptance or rejection for filing of any records control schedule, destruction authorization request, electronic storage authorization request, or other statutory filing required by Subtitle C, Title 6, Local Government Code, or rules adopted under it.

Sec. 441.168. **Microfilming Local Government Records.** [72nd Leg., 1991]

(a) On request of a local government, the director and librarian may provide for the microfilming of the local government records of that local government. Local government records are open to the director and librarian for that purpose.

(b) The commission shall establish fees for the microfilming of local government records in amounts sufficient to cover the costs of administering and expanding the microfilming services of the records management division in the state library for the purpose of implementing Subsection (a). The fees received under this section shall be deposited in the state treasury in an account to be used only for the costs of administrating and expanding microfilming services.

Subchapter K. **Reduction And Simplification Of Agency Paperwork.**

Sec. 441.171. **Definitions.** [71st Leg., 1989]

In this subchapter:

(1) "Agency" means a state executive, judicial, legislative, or eleemosynary department, institution, board, or commission.

(2) "Committee" means the Records Management and Preservation Advisory Committee created under Section 441.053.

Sec. 441.172. **Committee Powers and Duties.** [71st Leg., 1989]

(a) The committee shall make recommendations relating to the reduction and simplification of paperwork generated by agencies in the performance of their functions.

(b) In performing its duties under Subsection (a), the committee shall develop a plan for:

(1) the reduction and simplification of agency paperwork; and

(2) the analysis and classification of forms used by agencies.

Sec. 441.173. **Report.** [71st Leg., 1989]

In the report submitted by the committee under Section 441.053(d), the committee shall include recommendations relating to the reduction and simplification of state paperwork, including proposals for legislation as necessary to implement the recommendations.

Sec. 441.174. **Agency Cooperation.** [71st Leg., 1989]

Each agency shall fully cooperate in the implementation of this subchapter. The agency shall analyze and classify the forms used by the agency with the objective being form simplification and overall reduction of paperwork in accordance with the plan developed by the committee.

Sec. 441.175. **Review.** [71st Leg., 1989]

The records preservation officer and the committee shall review the plan created under this subchapter at least once every two years.

Chapter 443. **STATE PRESERVATION BOARD.**

Sec. 443.006. **Curator of the Capitol.** [72nd Leg., 1991]

(a) The executive director shall employ a curator of the Capitol. The curator of the Capitol must have at least a master's degree and four years' experience in historic collections administration with a specialization in the material culture of this state.

(b) The curator of the Capitol shall:

(1) assist in matters dealing with the preservation of historic materials;

(2) develop and maintain a registration system and inventory of the contents of the Capitol and the General Land Office Building and their grounds and of the original documents relating to the buildings' construction and alteration;

(3) develop a program to purchase or accept by donation, permanent loan, or outside funding items of historical significance that were at one time in the buildings and that are not owned by the state;

(4) develop a program to locate and acquire state-owned items of historical significance that were at one time in the buildings;

(5) develop a collections policy regarding the items of historic significance as identified in the registration system and inventory for the approval of the permanent advisory committee and the board;

(6) make recommendations on conservation needs and make arrangements to contract for conservation services for objects of significance;

(7) make recommendations for the transfer or loan of objects of significance as detailed in the approved collections policy.

(8) develop for board approval a furnishings plan for the placement and care of objects under the care of the curator;

(9) make recommendations to transfer, sell, or otherwise dispose of unused surplus property that is not of significance as defined in the collections policy and by the registration system and inventory prepared by the curator, in the manner provided by Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);

(10) approve all exhibits placed in the buildings; and

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Sec. 443.007. **General Powers and Duties of Board.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) The board shall:

(1) preserve, maintain, and restore the Capitol, the General Land Office Building, their contents, and their grounds;

(2) define the buildings' grounds, except that the grounds may not include another state office building;

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(6) define and identify, with the curator of the Capitol, all significant contents of the buildings and all state-owned items of historical significance that were at one time in the buildings; and

(7) maintain archives relating to the construction and development of the buildings, their contents, and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Texas State Library and Archives Commission.

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(c) Any power or duty related to the buildings and formerly vested in the Texas Commission on the Arts, State Purchasing and General Services Commission, Antiquities Committee, Texas Historical Commission, Texas State Library and Archives Commission, or any other entity or state agency is vested solely in the board.

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Sec. 443.009. **Offices, Records, and Documents in the Capitol.** [Amended 73rd Leg., 1993]

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(c) The board and the employees of the board have no control over records and documents produced by or in the custody of a state agency, official, or employee having an office in the Capitol.

Sec. 443.011. **Responsibility for Items.** [70th Leg., 1987]

Furniture, furnishings, fixtures, works of art, and decorative objects for which the board has responsibility under this chapter are not part of the Texas State Library and are not subject to the custody or control of the Texas State Library and Archives Commission or any other agency.

Sec. 443.014. **Texans Awarded the Congressional Medal of Honor.** [71st Leg., 1989]

(a) The board shall include in its long-range master plan for the maintenance, preservation, restoration, and modification of the Capitol and grounds of the Capitol the construction of a permanent exhibit or memorial honoring citizens of this state who have been awarded the Congressional Medal of Honor.

(b) On the request of the board, the Texas State Library and Archives Commission, the Texas Historical Commission, and the Texas Veterans Commission shall assist the board in the planning of the exhibit or memorial, including its design, placement, and content.

(c) The board shall create an advisory committee, consisting of any number of citizens of this state each of whom has been awarded the Congressional Medal of Honor, to advise the board regarding the exhibit or memorial.

Sec. 443.017. **Transfer of Certain Historical Items.** [72nd Leg., 1991]

(a) A state agency or other state entity that possesses a state-owned item identified by the curator of the Capitol and the board as an item of historical significance that was at one time located in the Capitol or in the General Land Office Building shall transfer the item in the inventory of the board at the direction of the curator not later than the 60th day after the date that the curator notifies the agency or entity. The state agency or other state entity shall subsequently transfer physical possession of the item to the board in accordance with policies and procedures established by the board.

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(c) This section does not apply to records or documents in the custody of the General Land Office or the Texas State Library and Archives Commission.

Chapter 444. **TEXAS COMMISSION ON THE ARTS.**
Subchapter B. **Powers And Duties.**

Sec. 444.021. **General Duties.** [70th Leg., 1987; Amended 74th Leg., 1995]

The commission shall:

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(5) provide advice to the General Services commission, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, Texas Department of Transportation, and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in the state;

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Subtitle F. **COMMERCE AND INDUSTRIAL DEVELOPMENT.**
Chapter 481. **TEXAS DEPARTMENT OF COMMERCE.**
Subchapter B. **General Powers and Duties Of Department.**

Sec. 481.026. **Literacy** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) In this section, "council" means the Council on Workforce and Economic Competitiveness.

(b) The council shall:

(1) advise the governor, the Texas Workforce Commission, the State Board of Education, the Texas Higher Education Coordinating Board, and any group interested in literacy on policy, planning, research, and program development;

(2) coordinate the development and maintenance of a literacy services delivery system;

(3) oversee the attainment of the state's literacy goals;

(4) build a partnership with the private sector in order to inform the objectives-setting process and to gain acceptance of the services of a functional literacy program;

(5) provide state leadership to encourage and support local and statewide literacy efforts;

(6) advocate the importance of literacy to ensure that all in need of assistance understand the benefits of increased functional literacy and to ensure that the necessary resources are available;

(7) make literacy instruction available to adults and out-of-school youth by ensuring that a comprehensive literacy instruction capacity is present in every Texas community;

(8) coordinate and improve local literacy instruction to ensure the most efficient and effective use of resources to meet adult education goals;

(9) identify state and local literacy programs and enter them in a directory for centralized referral and communication;

(10) continue oversight of literacy needs analysis;

(11) continue to develop an awareness campaign;

(12) develop a timetable and objectives for reaching the proposed goals and subgoals; and

(13) make recommendations to the governor, lieutenant governor, and speaker of the house of representatives or other state officials or organizations that it considers appropriate regarding the expenditure of funds and the administration of programs.

(c) The department may award literacy grants out of state, local, federal, and private money available to the department for that purpose. Grants shall be awarded under guidelines set by the Texas Workforce Commission. The guidelines shall include a competitive request for proposal process that includes criteria for evaluating the proposals.

(d) The department may establish a Texas literacy trust fund for the purpose of collecting private funds for distribution to community literacy programs....

Subchapter D. **World Trade.**

Sec. 481.060. **Electronic Data Base.** [72nd Leg., 1991; Amended 73rd Leg., 1993]

(a) In cooperation with other state agencies, the international trade division of the department shall develop an electronic data base to compile international trade information, including information on economic, educational, and other opportunities in the public and private sectors. The division shall connect that data base with appropriate state, federal, and international communication networks.

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Subchapter M. **Data Depository.**

Sec. 481.183. **Agency Cooperation.** [71st Leg., 1989]

Each state agency that provides, collects, analyzes, or disseminates information of any type shall execute a written agreement with the department providing for coordination of those activities with the department's activities under this subchapter. However, an agency is not required to supply information made confidential or the distribution of which is otherwise restricted by state law.

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Title 5. **OPEN GOVERNMENT; ETHICS.**
Subtitle A. **OPEN GOVERNMENT.**
Chapter 551. **OPEN MEETINGS.**
Subchapter A. **General Provisions.**

Sec. 551.001. **Definitions.** [73rd Leg., 1993]

In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rule-making or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

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(4) "Meeting" means a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action. The term does not include the gathering of a quorum of a

governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, if formal action is not taken and any discussion of public business is incidental to the social function, convention, or workshop. The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

Sec. 551.002. **Open Meetings Requirement.** [73rd Leg., 1993]

Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.

Sec. 551.003. **Legislature.** [73rd Leg., 1993]

In this chapter, the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution.

Sec. 551.004. **Open Meetings Required by Charter.** [73rd Leg., 1993]

This chapter does not authorize a governmental body to close a meeting that a charter of the governmental body:

(1) prohibits from being closed; or

(2) requires to be open.

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Subchapter B. **Record Of Open Meeting.**

Sec. 551.021. **Minutes or Tape Recording of Open Meeting Required.** [73rd Leg., 1993]

(a) A governmental body shall prepare and keep minutes or make a tape recording of each open meeting of the body.

(b) The minutes must:

(1) state the subject of each deliberation; and

(2) indicate each vote, order, decision, or other action taken.

Sec. 551.022. **Minutes and Tape Recordings of Open Meeting: Public Record.** [73rd Leg., 1993]

The minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee.

Sec. 551.023. **Recording of Meeting by Person in Attendance.** [73rd Leg., 1993]

(a) A person in attendance may record all or any part of an open meeting of a governmental body by means of a tape recorder, video camera, or other means of aural or visual reproduction.

(b) A governmental body may adopt reasonable rules to maintain order at a meeting, including rules relating to:

(1) the location of recording equipment; and

(2) the manner in which the recording is conducted.

(c) A rule adopted under Subsection (b) may not prevent or unreasonably impair a person from exercising a right granted under Subsection (a).

Subchapter C. **Notice Of Meetings.**

Sec. 551.041. **Notice of Meeting Required.** [73rd Leg., 1993]

A governmental body shall give written notice of the date, hour, place, and subject of each meeting held by the governmental body.

Sec. 551.042. **Inquiry Made at Meeting.** [73rd Leg., 1993]

(a) If, at a meeting of a governmental body, a member of the public or of the governmental body inquires about a subject for which notice has not been given as required by this subchapter, the notice provisions of this subchapter do not apply to:

(1) a statement of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(b) Any deliberation of or decision about the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

Sec. 551.043. **Time and Accessibility of Notice; General Rule.** [73rd Leg., 1993]

The notice of a meeting of a governmental body must be posted in a place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting, except as provided by Sections 551.044-551.046.

Sec. 551.044. **Exception to General Rule: Governmental Body with Statewide Jurisdiction.** [73rd Leg., 1993]

(a) The secretary of state must post notice of a meeting of a state board, commission, department, or officer having statewide jurisdiction for at least seven days before the day of the meeting.

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Sec. 551.045. **Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda.** [73rd Leg., 1993]

(a) In an emergency or when there is an urgent public necessity, the notice of a meeting or the supplemental notice of a subject added as an item to the agenda for a meeting for which notice has been posted in accordance with this

subchapter is sufficient if it is posted for at least two hours before the meeting is convened.

(b) An emergency or an urgent public necessity exists only if immediate action is required of a governmental body because of:

(1) an imminent threat to public health and safety; or

(2) a reasonable unforeseeable situation.

(c) The governmental body shall clearly identify the emergency or urgent public necessity in the notice or supplemental notice under this section.

(d) A person who is designated or authorized to post notice of a meeting by a governmental body under this subchapter shall post the notice taking at face value the governmental body's stated reason for the emergency or urgent public necessity.

Sec. 551.046. **Exception to General Rule: Committee of Legislature**. [73rd Leg., 1993]

The notice of a legislative committee meeting shall be as provided by the rules of the house of representatives or of the senate.

Sec. 551.047. **Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda.** [73rd Leg., 1993]

(a) The presiding officer of a governmental body, or the member of a governmental body who calls an emergency meeting of the governmental body or adds an emergency item to the agenda of a meeting of the governmental body, shall notify the news media of the emergency meeting or emergency item as required by this section.

(b) The presiding officer or member is required to notify only those members of the news media that have previously:

(1) filed at the headquarters of the governmental body a request containing all pertinent information for the special notice; and

(2) agreed to reimburse the governmental body for the cost of providing the special notice.

(c) The presiding officer or member shall give the notice by telephone or telegraph.

Sec. 551.048. **State Governmental Body: Notice to Secretary of State; Place of Posting Notice.** [73rd Leg., 1993]

(a) A state governmental body shall provide notice of each meeting to the secretary of state.

(b) The secretary of state shall post the notice on a bulletin board at a place convenient to the public in the main office of the secretary of state.

Sec. 551.049. **County Governmental Body: Place of Posting Notice.** [73rd Leg., 1993]

A county governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the county courthouse.

Sec. 551.050. **Municipal Governmental Body: Place of Posting Notice.** [73rd Leg., 1993]

A municipal governmental body shall post notice of each meeting on a bulletin board at a place convenient to the public in the city hall.

Sec. 551.051. **School District: Place of Posting Notice.** [73rd Leg., 1993]

A school district shall post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the district.

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Subchapter D. **Exceptions To Requirement That Meetings Be Open.**

Sec. 551.071. **Consultation With Attorney; Closed Meeting.** [73rd Leg., 1993]

A governmental body may not conduct a private consultation with its attorney except:

(1) when the governmental body seeks the advice of its attorney about:

(A) pending or contemplated litigation; or

(B) a settlement offer; or

(2) on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this chapter.

Sec. 551.072. **Deliberation Regarding Real Property; Closed Meeting**. [73rd Leg., 1993]

A governmental body may conduct a closed meeting to deliberate the purchase, exchange lease, or value of real property if deliberation in an open meeting would have a detrimental affect on the position of the governmental body in negotiations with a third person.

Sec. 551.073. **Deliberation Regarding Prospective Gift; Closed Meeting.** [73rd Leg., 1993]

A governmental body may conduct a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the state or the governmental body if deliberation in an open meeting would have detrimental effect on the position of the governmental body in negotiations with a third person.

Sec. 551.074. **Personnel matters; Closed Meeting.** [73rd Leg., 1993]

(a) This chapter does not require a governmental body to conduct an open meeting:

(1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or

(2) to hear a complaint or charge against an officer or employee.

(b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

Sec. 551.075. **Conference With Employees; Closed Meeting.** [73rd Leg., 1993]

(a) This chapter does not require a governmental body to confer with one or more employees of the governmental body in an open meeting if the only purpose of the conference is to:

(1) receive information from the employees; or

(2) question the employees.

(b) During a conference under Subsection (a), members of the governmental body may not deliberate public business or agency policy that affects public business.

Sec. 551.076. **Deliberation Regarding Security Devices; Closed Meeting.** [73rd Leg., 1993]

This chapter does not require a governmental body to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices.

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Subchapter E. **Procedures Relating To Closed Meeting.**

Sec. 551.101. **Requirement to First Convene in Open Meeting.** [73rd Leg., 1993]

If a closed meeting is allowed under this chapter, a governmental body may not conduct the closed meeting unless a quorum of the governmental body first convenes in an open meeting for which notice has been given as provided by this chapter and during which the presiding officer publicly:

(1) announces that a closed meeting will be held; and

(2) identifies the section or sections of this chapter under which the closed meeting is held.

Sec. 551.102. **Requirement to Vote or Take Final Action in Open Meeting.** [73rd Leg., 1993]

A final action, decision, or vote on a matter deliberated in a closed meeting under this chapter may only be made in an open meeting that is held in compliance with the notice provisions of this chapter.

Sec. 551.103. **Certified Agenda or Tape Recording Required.** [73rd Leg., 1993]

(a) A governmental body shall either keep a certified agenda or make a tape recording of the proceedings of each closed meeting, except for a private consultation permitted under Section 551.071.

(b) The presiding officer shall certify that an agenda kept under Subsection (a) is a true and correct record of the proceedings.

(c) The certified agenda must include:

(1) a statement of the subject matter of each deliberation;

(2) a record of any further action taken; and

(3) an announcement by the presiding officer at the beginning and the end of the meeting indicating the date and time.

(d) A tape recording made under Subsection (a) must include announcements by the presiding officer at the beginning and the end of the meeting indicating the date and time.

Sec. 551.104. **Certified Agenda or Tape; Preservation; Disclosure.** [73rd Leg., 1993]

(a) A governmental body shall preserve the certified agenda or tape recording of a closed meeting for at least two years after the date of the meeting. If an action involving the meeting is brought within that period, the governmental body shall preserve the certified agenda or tape while the action is pending.

(b) In litigation in a district court involving an alleged violation of this chapter, the court:

(1) is entitled to make an in camera inspection of the certified agenda or tape;

(2) may admit all or part of the certified agenda or tape as evidence, on entry of a final judgment; and

(3) may grant legal or equitable relief it considers appropriate, including an order that the governmental body make available to the public the certified agenda or tape of any part of a meeting that was required to be open under this chapter.

(c) The certified agenda or tape of a closed meeting is available for the public inspection and copying only under a court order issued under Subsection (b)(3).

Subchapter F. **Meetings By Telephone Conference Call.**

Sec. 551.125. **Other Governmental Body.** [74th Leg., 1995]

(a) Except as otherwise provided by this subchapter, this chapter does not prohibit a governmental body from holding an open or closed meeting by telephone conference call.

(b) An meeting held by telephone conference call may be held only if:

(1) an emergency or public necessity exists within the meaning of Section 551.045 of this chapter; and

(2) the convening at one location of a quorum of the governmental body is difficult or impossible; or

(3) the meeting is held by an advisory board.

(c) The telephone conference call meeting is subject to the notice requirements applicable to other meetings.

(d) The notice of the telephone conference call meeting must specify as the location of the meeting the location where meetings of the governmental body are usually held.

(e) Each part of the telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape-recorded. The tape recording shall be made available to the public.

(f) The location designated in the notice as the location of the meeting shall provide two-way communication during the entire telephone conference call meeting and the identification of each party to the telephone conference shall be clearly stated prior to speaking.

Subchapter G. **Enforcement And Remedies; Criminal Violations.**

Sec. 551.141. **Action Voidable.** [73rd Leg., 1993]

An action taken by a governmental body in violation of this chapter is voidable.

Sec. 551.142. **Mandamus; Injunction.** [73rd Leg., 1993]

(a) An interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of this chapter by members of a governmental body.

(b) The court may assess costs of litigation and reasonable attorney fees incurred by a plaintiff or defendant who substantially prevails in an action under Subsection (a). In exercising its discretion, the court shall consider whether the action was brought in good faith and whether the conduct of the governmental body had a reasonable basis in law.

Sec. 551.143. **Conspiracy to Circumvent Chapter; Offense; Penalty.** [73rd Leg., 1993]

(a) A member or group of members of a governmental body commits an offense if the member or group of members knowingly conspires to circumvent this chapter by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in the county jail for not less than one month or more than six months; or

(3) both the fine and confinement.

Sec. 551.144. **Closed Meeting; Offense; Penalty.** [73rd Leg., 1993]

(a) A member of governmental body commits an offense if a closed meeting is not permitted under this chapter and the member knowingly:

(1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting;

(2) closes or aids in closing the meeting to the public, if it is a regular meeting; or

(3) participates in the closed meeting, whether it is a regular, special, or called meeting.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in the county jail for not less than one month or more than six months; or

(3) both the fine and confinement.

Sec. 551.145. **Closed Meeting Without Certified Agenda or Tape Recording; Offense; Penalty.** [73rd Leg., 1993]

(a) A member of a governmental body commits an offense if the member participates in a closed meeting of the governmental body knowing that a certified agenda of the closed meeting is not being kept or that a tape recording of the closed meeting is not being made.

(b) An offense under Subsection (a) is a Class C misdemeanor.

Sec. 551.146. **Disclosure of Certified Agenda or Tape Recording of Closed Meeting; Offense; Penalty; Civil Liability.** [73rd Leg., 1993]

(a) An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public the certified agenda or tape recording of a meeting that was lawfully closed to the public under this chapter:

(1) commits an offense; and

(2) is liable to a person injured or damaged by the disclosure for:

(A) actual damages, including damages for personal injury or damage, lost wages, defamation, or mental or other emotional distress;

(B) reasonable attorney fees and court costs; and

(C) at the discretion of the trier of fact, exemplary damages.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) and an affirmative defense to a civil action under Subsection (a)(2) that:

(1) the defendant had good reason to believe the disclosure was lawful; or

(2) the disclosure was the result of a mistake of fact concerning the nature or content of the certified agenda or tape recording.

Title 5. **OPEN GOVERNMENT; ETHICS.**
Subtitle A. **OPEN GOVERNMENT.**
Chapter 552. **PUBLIC INFORMATION.**
Subchapter A. **General Provisions.**

Sec. 552.001. **Policy; Construction.** [73rd Leg., 1993]

(a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

Sec. 552.002. **Definition of Public Information; Media Containing Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

(b) The media on which a public information is recorded include:

(1) paper;

(2) film;

(3) a magnetic, optical or solid state device that can store an electronic signal;

(4) tape;

(5) Mylar;

(6) linen;

(7) silk; and

(8) vellum.

(c) The general forms in which the media containing public information exist include a book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.

Sec. 552.003. **Definitions.** [73rd Leg., 1993; Amended 74th Leg., 1995]

In his chapter;

(1) "Governmental body":

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(ii) a municipal government body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

(viii) the governing board of a special district;

(ix) the governing body of a nonprofit corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code; and

(x) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.

(2) "Manipulation" means the process of modifying, reordering, or decoding of information with human intervention.

(3) "Processing" means the execution of a sequence of coded instructions by a computer producing a result.

(4) "Programming" means the process of producing a sequence of coded instructions that can be executed by a computer.

(5) "Public funds" means funds of the state or of a governmental subdivision of the state.

(6) "Requestor" means a person who submits a request to a governmental body for inspection or copies of public information.

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Sec. 552.006. **Effect of Chapter on Withholding Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

This chapter does not authorize the withholding of public information or limit the availability of public information to the public, except as expressly provided by this chapter.

Sec. 552.007. **Voluntary Disclosure of Certain Information When Disclosure Not Required.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Sec. 552.008. **Information for Legislative Purposes.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency or committee for inspection or duplication in accordance with this chapter if the requesting member, agency, or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to require disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is

confidential under law to sign a confidentiality agreement that covers the information and requires that:

(1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;

(2) the information be labeled as confidential;

(3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

(1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

(2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

Subchapter B. **Right of Access to Public Information.**

Sec. 552.021. **Availability of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

Public information is available to the public at a minimum during the normal business hours of the governmental body.

Sec. 552.022. **Categories of Public Information; Examples.** [73rd Leg., 1993; Amended 74th Leg., 1995]

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental mental body;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body;

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law;

(4) the name of each official and the final record of voting on all proceedings in a governmental body;

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

(6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code;

(7) a description of an agency's central and field organization, including:

(A) the established places at which the public may obtain information, submit information or requests, or obtain decisions;

(B) the employees from whom the public may obtain information, submit information or requests, or obtain decisions;

(C) in the case of a uniformed service, the members from whom the public may obtain information, submit information or requests, or obtain decisions; and

(D) the methods by which the public may obtain information, submit information or requests, or obtain decisions;

(8) a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal informal policies and procedures;

(9) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations;

(10) a substantive rule of general applicability adopted or issued by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency;

(11) each amendment, revision, or repeal of information described by Subdivisions (7) - (10);

(12) final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases;

(13) a policy statement or interpretation that has been adopted or issued by an agency;

(14) administrative staff manuals and instructions to staff that affect a member of the public;

(15) information regarded as open to the public under an agency's policies;

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege or confidential under other law;

(17) information that is also contained in a public court record; and

(18) a settlement agreement to which a governmental body is a party unless the agreement is confidential under other law.

Sec. 552.023. **Special Right of Access to Confidential Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.

(b) A governmental body may not deny access to information to the person, or the person's representative, to whom the information relates on the grounds that the information is considered confidential by privacy principles under this chapter but may assert as grounds for denial of

access other provisions of this chapter or other law that are not intended to protect the person's privacy interests.

(c) A release of information under Subsections (a) and (b) is not an offense under Section 552.352.

(d) A person who receives information under this section may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(e) Access to information under this section shall be provided in the manner prescribed by Sections 552.229 and 552.307.

Sec. 552.024. **Electing to Disclose Address and Telephone Number.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveal whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing not later than the 14th day after the date on which:

(1) the employee begins employment with the governmental body;

(2) the official is elected or appointed; or

(3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

(e) An employee or official or former employee or official of a governmental body who wishes to close or open public access to the information may request in writing that the main personnel officer of the governmental body close or open access.

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Sec. 552.026. **Education Records.** [73rd Leg., 1993]

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

*[Note: At the time of printing this publication the statute contains two Section 552.027's, one of which is used here.]*

Sec. 552.027. **Exception: Information Available Commercially; Resource Material.** [74th Leg., 1995]

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Subchapter C. **Information Excepted From Required Disclosure**

Sec. 552.101. **Exception: Confidential Information.** [73rd Leg., 1993]

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

Sec. 552.102. **Exception: Personnel Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception public disclosure created by this subsection is in addition to any exception created by Section 552.024. Public access to personnel information covered by Section 552.024. is denied to the extent provided by that section.

(b) Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Sec. 552.103. **Exception: Litigation or Settlement Negotiations Involving the State or a Political Subdivision.** [73rd Leg., 1993]

(a) Information is excepted from the requirements of Section 552.021 if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political

subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

(b) For purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court.

Sec. 552.104. **Exception: Information Related to Competition or Bidding.** [73rd Leg., 1993]

Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.

Sec. 552.105. **Exception: Information Related to Location or Price of Property.** [73rd Leg., 1993]

Information is excepted from the requirements of Section 552.021 if it is information relating to:

(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

Sec. 552.106. **Exception: Certain Legislative Documents.** [73rd Leg., 1993]

A draft or working paper involved in the preparation of proposed legislation is excepted from the requirements of Section 552.021.

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Sec. 552.109. **Exception: Certain Private Communications of an Elected Office Holder.** [73rd Leg., 1993]

Private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy are excepted from the requirements of Section 552.021.

Sec. 552.110. **Exception: Trade Secrets, Commercial Information, or Financial Information.** [73rd Leg., 1993]

A trade secret or commercial or financial information obtained from a person and privileged or confidential by state or judicial decision is excepted from the requirements of Section 552.021.

Sec. 552.111 **Exception: Agency Memoranda.** [73rd Leg., 1993]

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from the requirements of Section 552.021.

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Sec. 552.114. **Exception: Student Records.** [73rd Leg., 1993]

(a) Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue.

(b) A record under Subsection (a) shall be made available on the request of:

(1) educational institution personnel;

(2) the student involved or the student's parent, legal guardian, or spouse; or

(3) a person conducting a child abuse investigation required by Section 34.05, Family Code.

Sec. 552.115. **Exception: Birth and Death Records.** [73rd Leg., 1993]

A birth or death record maintained by the bureau of vital statistics of the Texas Department of Health is excepted from the requirements of Section 552.021, except that:

(1) a birth record is public information and available to the public on and after the 50th anniversary of the date on which the record is filed with the bureau of vital statistics or local registration official; and

(2) a death record is public information and available to the public on and after the 25th anniversary of the date on which the record is filed with the bureau of vial statistics or local registration official.

Sec. 552.116. **Exception: State Auditor Working Papers.** [73rd Leg., 1993]

An audit working paper of the state auditor is excepted from the requirements of Section 552.021.

Sec. 552.117. **Exception: Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

Information is excepted from the requirements of Section 552.021 if it if information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedures, or a security officer commissioned under Section 51.212, Education Code.

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Sec. 552.120. **Exception: Certain Rare Books and Original Manuscripts.** [73rd Leg., 1993]

A rare book or original manuscript that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021.

Sec. 552.121. **Exception: Certain Documents Held for Historical Research.** [73rd Leg., 1993]

An oral history interview, personal paper, unpublished letter, or organizational record of a nongovernmental entity that was not created or maintained in the conduct of official business of a governmental body and that is held by a private or public archival and manuscript repository for the purpose of historical research is excepted from the requirements of Section 552.021 to the extent that the archival and manuscript repository and the donor of the interview, paper, letter, or record agree to limit disclosure of the item.

Sec. 552.122. **Exception: Test Items.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021.

(b) A test item developed by a licensing agency or governmental body is excepted from the requirements of Section 552.021.

Sec. 552.123. **Exception: Name of Applicant for Chief Executive Officer of Institution of Higher Education.** [73rd Leg., 1993]

The name of an applicant for the position of chief executive officer of an institution of higher education is excepted from the requirements of Section 552.021, except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.

*[Note: At the time of printing this publication the statute contains three Section 552.124's, two of which are used here.]*

Sec. 552.124. **Exception: Records of Library or Library System.** [74th Leg., 1995]

(a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from the requirements of Section 552.021 unless the record is disclosed:

(1) because the library or library system determines that disclosure is reasonably necessary for the operation of the library or library system and the record is not confidential under other state or federal law;

(2) under Section 552.023; or

(3) to a law enforcement agency or a prosecutor under a court order or subpoena obtained after a showing to a district court that:

(A) disclosure of the record is necessary to protect the public safety; or

(B) the record is evidence of an offense or constitutes evidence that a particular person committed an offense.

(b) A record of a library or library system that is excepted from required disclosure under this section is confidential.

Sec. 552.124. **Exception: Name of Applicant for Superintendent of Public School District.** [74th Leg., 1995]

The name of an applicant for the position of superintendent of a public school district is excepted from the requirements of Section 552.021, except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which a final action or vote is to be taken on the employment of the person.

Subchapter D. **Officer for Public Information.**

Sec. 552.201. **Identity of Officer for Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) The chief administration officer of a governmental body is the officer for public information, except as provided by Subsection (b).

(b) Each elected county officer is the officer for public information and the custodian, as defined by Section 201.003, Local Government Code, of the information created or received by that county officer's office.

Sec. 552.202. **Department Heads.** [73rd Leg., 1993; Amended 74th Leg., 1995]

Each department head is an agent of the officer for public information for the purposes of complying with this chapter.

Sec. 552.203. **General Duties of Officer for Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

Each officer for public information, subject to penalties provided in this chapter, shall:

(1) make public information available for public inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and

(3) repair, renovate, or rebind public information as necessary to maintain it properly.

Sec. 552.204. **Scope of Responsibility of Officer for Public Information.** [74th Leg., 1995]

An officer for public information is responsible for the release of public information as required by this chapter. The officer is not responsible for:

(1) the use made of the information by the requestor; or

(2) the release of information after it is removed from a record as a result of an update, a correction, or a change of status of the person to whom the information pertains.

Subchapter E. **Procedures Related to Access.**

Sec. 552.221. **Application for Public Information; Production of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided by mail and agrees to pay the postage.

(c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

(d) If an officer for public information cannot produce public information for inspection or duplication within 10 calendar days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

Sec. 552.222. **Permissible Inquiry By Governmental Body to Requestor.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) The officer for public information and the officer's agent may not make an inquiry of a requestor except to establish proper identification or except as provided by Subsection (b).

(b) If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

Sec. 552.223. **Uniform Treatment of Requests for Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

The officer for public information or the officer's agent shall treat all requests for information uniformly without regard to the position or occupation of the requestor, the person on whose behalf the request is made, or the status of the individual as a member of the media.

Sec. 552.224. **Comfort and Facility.** [73rd Leg., 1993; Amended 74th Leg., 1995]

The officer for public information or the officer's agent shall give to a requestor all reasonable comfort and facility for the full exercise of the right granted by this chapter.

Sec. 552.225. **Time for Examination.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A requestor must complete the examination of the information not later than the 10th day after the date the custodian of the information makes it available to the person.

(b) The officer for public information shall extend the initial examination period by an additional 10 days if, within the initial period, the requestor files with the officer for public information a written request for additional time. The officer for public information shall extend an additional examination period by another 10 days if, within the additional period, the requestor files with the officer for public information a written request for more additional time.

(c) The time during which a person may examine information may be interrupted by the officer for public information if the information is needed for use by the governmental body. The period of interruption is not considered to be a part of the time during which the person may examine the information.

Sec. 552.226. **Removal of Original Record.** [73rd Leg., 1993; Amended 74th Leg., 1995]

This chapter does not authorize a requestor to remove an original copy of a public record from the office of a governmental body.

Sec. 552.227. **Research of State Library Holdings Not Required.** [73rd Leg., 1993; Amended 74th Leg., 1995]

An officer for public information or the officer's agent is not required to perform general research within the reference and research archives and holdings of state libraries.

Sec. 552.228. **Providing Suitable Copy of Public Information Within Reasonable Time.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) It shall be a policy of a governmental body to provide a suitable copy of public information within a reasonable time after the date on which the copy is requested.

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

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Sec. 552.230. **Rules of Procedure for Inspection of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

A governmental body may promulgate reasonable rules of procedure under which public information may be inspected efficiently safely, and without delay.

Sec. 552.231. **Responding to Requests for Information That Require Programming or Manipulation of Data.** [74th Leg., 1995]

(a) A governmental body shall provide to a requestor the written statement described by Subsection (b) if the governmental body determines:

(1) that responding to a request for public information will require programming or manipulation of data; and

(2) that:

(A) compliance with the request is not feasible or will result in substantial interference with its ongoing operations; or

(B) the information could be made available in the requested form only at a cost that covers the programming and manipulation of data.

(b) The written statement must include:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form, as determined in accordance with the rules established by the General Services Commission under Section 552.262; and

(5) a statement of the anticipated time required to provide the information in the requested form.

(c) The governmental body shall provide the written statement to the requestor within 20 days after the date of the governmental body's receipt of the request. The governmental body has an additional 10 days to provide the statement if the governmental body gives written notice to the requestor, within 20 days after the date of receipt of the request, that the additional time is needed.

(d) On providing the written statement to the requestor as required by this section, the governmental body does not have any further obligation to provide the information in the requested form or in the form in which it is available until the requestor states in writing to the governmental body that the requestor:

(1) wants the governmental body to provide the information in the requested form according to the cost and time parameters set out in the statement or according to other terms to which the requestor and governmental body agree; or

(2) wants the information in the form in which it is available.

(e) The officer for public information of a governmental body shall establish policies that assure the expeditious and accurate processing of requests for information that require programming or manipulation of data. A governmental body shall maintain a file containing all written statements issued under this section in a readily accessible location.

Subchapter F. **Cost of Copies.**

Sec. 552.261. **Determining Cost of Copies.** [73rd Leg., 1993; Amended 74th Leg., 1995]

The cost of obtaining a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge for the public information may not include costs of materials, labor, or overhead, but shall be limited to the photocopying costs, unless the pages to be copied are located in:

(1) more than one building; or

(2) a remote storage facility.

Sec. 552.2611. **Charges for Public Records by State Agency.** [74th Leg., 1995]

(a) The General Services Commission by rule shall specify the methods and procedures that a state agency may use in determining the amounts that the agency should charge to recover the full cost to the agency of providing copies of public records under this chapter.

(b) Each state agency by rule shall specify the charges the agency will make for copies of public records. A state agency may establish a charge for a copy of a public record that is equal to the full cost to the agency of providing the copy.

(c) A state agency shall pay to the comptroller for deposit in an unobligated account designated by the comptroller in the general revenue fund all money collected by the agency for providing copies of public records.

(d) Of the total amount of money deposited in the general revenue fund under Subsection (c), the comptroller may

transfer 25 percent of the money collected for providing copies of mailing lists and 15 percent of the money collected for providing copies of the public records to the general revenue fund.

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Sec. 552.262. **Rules of the General Services Commission.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) The General Services Commission shall adopt rules for use by each governmental body in determining charges under this subchapter. The rules adopted by the General Services Commission shall be used by each governmental body in determining charges for copies of public information, except to the extent that other law provides for charges for specific kinds of public information. The charges for public information may not be excessive and may not exceed the actual cost of producing the information. A governmental body, other than an agency of state government, may determine its own charges for producing public information but shall not charge more than a 25 percent variance from the rules established by the General Services Commission unless the governmental body requests an exemption under Subsection (c).

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(c) A governmental body may request that it be exempt from part or all of the rules adopted by the General Services Commission for determining charges for public information.....

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Sec. 552.263. **Bond for Payment of Costs or Cash Prepayment for Preparation of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

An officer for public information or the officer's agent may require a deposit or bond for payment of anticipated costs for the preparation of a copy of public information if the charge for the copy is estimated by the governmental body to exceed $100.

Sec. 552.264. **Copy of Public Information Requested By Member of Legislature.** [73rd Leg., 1993; Amended 74th Leg., 1995]

One copy of public information that is requested from a state agency by a member of the legislature in the performance of the member's duties shall be provided without charge.

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Sec. 552.267. **Waiver or Reduction of Fee for Copy of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A governmental body shall furnish a copy of public information without charge or at a reduced charge if the governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(b) If the cost to a governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

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Sec. 552.269. **Overcharge or Overpayment for Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

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(b) A person who overpays for a copy of public information because a governmental body refuses or fails to follow the rules for charges adopted by the General Services Commission is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the costs.

*[Note: At the time of printing this publication the statute contains two Section 552.270's.]*

Sec. 552.270. **Report by State Agency on Cost of Copies.** [74th Leg., 1995]

(a) Not later than December 1 of each even-numbered year, each estate agency shall file a report with the Legislative Budget Board, comptroller, and General Services Commission describing the agency's procedures for charging and collecting fees for copies of public records.

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Sec. 552.270. **Cost of Government Publication.** [74th Leg., 1995]

(a) The cost provisions of this subchapter do not apply to a publication that is compiled and printed by or for a governmental body for public dissemination. If the cost of the publication is not determined by state law, a governmental body may determine the charge to be made for the publication.

(b) This section does not prohibit a governmental body from providing a publication free of charge if state law does not require that a certain charge be made.

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Sec. 552.272. **Inspection of Electronic Record if Copy Not Requested.** [74th Leg., 1995]

(a) In response to a request to inspect information that exists in an electronic medium and that is not available directly on-line/ to the requestor, a charge may not be imposed for access to the information, unless complying with the request will require programming or manipulation of data. If programming or manipulation of data is required, the governmental body shall notify the requestor before assembling the information and provide the requestor with an estimate of charges that will be imposed to make the information available. A charge under this section must be assessed in accordance with this subchapter.

(b) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means, the electronic form of the information may be electronically copied from that computer without charge if accessing the information does not require processing, programming, or manipulation on the government-owned or government-leased computer before the information is copied.

(c) If public information exists in an electronic form on a computer owned or leased by a governmental body and if the public has direct access to that computer through a computer network or other means and the information requires processing, programming, or manipulation before it can be electronically copied, a governmental body may impose charges in accordance with this subchapter.

(d) If information is created or kept in an electronic form, a governmental body is encouraged to explore options to separate out confidential information and to make public information available to the public through electronic access through a computer network or by other means.

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Subchapter G. **Attorney General Decisions.**

Sec. 552.301. **Request for Attorney General Decision.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.

(b) A governmental body that requests an attorney general decision under Subsection (a) must within a reasonable time but not later than the 15th calendar day after the date of receiving the written request:

(1) submit to the attorney general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld;

(2) submit to the attorney general a copy of the written request for information;

(3) submit to the attorney general a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested; and

(4) label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy.

Sec. 552.302. **Failure to Make Timely Request for Attorney General Decision; Presumption That Information is Public.** [73rd Leg, 1993]

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

Sec. 552.303. **Delivery of Requested Information to Attorney General; Disclosure of Requested Information; Attorney General Request for Submission of Additional Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A governmental body that requests an attorney general decision under this subchapter shall supply to the attorney general, in accordance with Section 552.301, the specific information requested. The governmental body may not disclose the information to the public or to the requestor until the attorney general makes a final determination that the information is public or, if suit is filed under this chapter, until a final determination that the information is public has been made by the court with jurisdiction over the suit, except as otherwise provided by Section 552.322.

(b) The attorney general may determine whether a governmental body's submission of information is sufficient to render a decision.

(c) If the governmental body failed to supply to the attorney general all of the specific information that is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body and the requestor.

(d) A governmental body notified under Subsection (c) shall submit the necessary additional information to the attorney general not later than the seventh calendar day after the date the notice is received.

(e) If a governmental body does not comply with Subsection (d), the information that is the subject of a person's request to the governmental body and regarding which the governmental body to comply with Subsection (d) is presumed to be public information.

Sec. 552.304. **Submission of Public Comments.** [73rd Leg., 1993; Amended 74th Leg., 1995]

A person may submit written comments stating reasons why the information at issue in a request for an attorney general decision should or should not be released.

Sec. 552.305. **Information Involving Privacy or Property Interests of Third Party.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to

release the information for the purpose of requesting an attorney general decision.

(b) A person whose interest may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

(c) The governmental body may, but is not required to, submit its reasons why the information should be withheld or released.

Sec. 552.306. **Rendition of Attorney General Decision; Issuance of Written Opinion.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) The attorney general shall promptly render a decision under this subchapter, consistent with the standards of due process, determining whether the requested information is within one of the exceptions of Subchapter C. The attorney general shall render the decision not later than the 60th working day after the date the attorney general received the request for a decision. If the attorney general is unable to issue the decision within the 60-day period, the attorney general may extend the period for issuing the decision by an additional 20 working days by informing the governmental body and the requestor, during the original 60-day period, of the reason for the delay.

(b) The attorney general shall issue a written opinion of the determination and shall provide a copy of the opinion to the requestor.

Sec. 552.307. **Special Right of Access; Attorney General Decision.** [73rd Leg., 1993]

(a) If a governmental body determines that information subject to a special right of access under Section 552.023 is exempt from disclosure under an exception of Subchapter C, other than an exception intended to protect the privacy interest of the requestor or the person whom the requestor is authorized to represent, the governmental body shall, before disclosing the information, submit a written request for a decision to the attorney general under the procedures of this subchapter.

(b) If a decision is not requested under Subsection (a), the governmental body shall release the information to the person with a special right of access under Section 552.023 not later than the 10th day after the date of receiving the request for information.

Sec. 552.308. **Timeliness of Action by Mail.** [74th Leg., 1995]

When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mails properly addressed with postage prepaid and:

(1) it bears a post office cancellation mark indicating a time within the period; or

(2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Subchapter H. **Civil Enforcement.**

Sec. 552.321. **Suit for Writ of Mandamus.** [73rd Leg., 1993; Amended 74th Leg., 1995]

A requestor or the attorney general may file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the governmental body refuses to request an attorney general's decision as provided by Subchapter G or refuses to supply public information or information that the attorney general has determined is public information.

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Subchapter I. **Criminal Violations.**

Sec. 552.351. **Destruction, Removal, or Alteration of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A person commits an offense if the person willfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $4,000;

(2) confinement in the county jail for not less than three days or more than three months; or

(3) both the fine and confinement.

Sec. 552.352. **Distribution of Confidential Information.** [73rd Leg., 1993]

(a) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(c) A violation under this section constitutes official misconduct.

Sec. 552.353. **Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) An officer for public information, or the officer's agent, commits an offense if, with criminal negligence, the officer or the officer's agent fails or refuses to give access to, or to permit or provide copying of, public information to a requestor as provided by this chapter.

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(e) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(f) A violation under this section constitutes official misconduct.

Title 5. **OPEN GOVERNMENT; ETHICS.**
Subtitle A. **OPEN GOVERNMENT.**
Chapter 554. **PROTECTION FOR REPORTING VIOLATIONS OF LAW.**

Sec. 554.001. **Definitions.** [73rd. Leg., 1993; Amended 74th Leg., 1995]

In this chapter:

(1) "Law" means:

(A) a state or federal statute;

(B) an ordinance of a local governmental entity; or

(C) a rule adopted under a statute or ordinance.

(2) "Local governmental entity" means a political subdivision of the state, including a:

(A) county;

(B) municipality;

(C) public school district; or

(D) special-purpose district or authority.

(3) "Personnel action" means an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

(4) "Public employee" means an employee or appointed officer other than an independent contractor who is paid to perform services for a state or local governmental entity.

(5) "State governmental entity" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education, as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

Sec. 554.002. **Retaliation Prohibited for Reporting Violation of Law.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority.

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

(1) regulate under or enforce the law alleged to be violated in the report; or

(2) investigate or prosecute a violation of criminal law.

Sec. 554.003. **Relief Available to Public Employee.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 554.002 is entitled to sue for:

(1) injunctive relief;

(2) actual damages;

(3) court costs; and

(4) reasonable attorney fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

(1) reinstatement to the employee's former position or an equivalent position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of fringe benefits and seniority rights lost because of the suspension or termination.

(c) In a suit under this chapter against an employing state or local governmental entity, a public employee may not recover compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses in an amount that exceeds:

(1) $50,000, if the employing state or local governmental entity has fewer than 101 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(2) $100,000, if the employing state or local governmental entity has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year;

(3) $200,000, if the employing state or local governmental entity has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year; and

(4) $250,000, if the employing state or local governmental entity has more than 500 employees in each of 20 or more calendar weeks in the calendar year in which the suit is filed or in the preceding year.

(d) If more than one subdivision of Subsection (c) applies to an employing state or local governmental entity, the amount of monetary damages that may be recovered from the entity in a suit brought under this chapter is governed by the applicable provision that provides the highest damage award.

Sec. 554.035. **Waiver of Immunity.** [74th Leg., 1995]

A public employee who alleges a violation of this chapter may sue the employing state or local governmental entity for the relief provided by this chapter. Sovereign immunity is

waived and abolished to the extent of liability for the relief allowed under this chapter for a violation of this chapter.

Sec. 554.004. **Burden of Proof; Presumption; Affirmative Defense.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A public employee who sues under this chapter has the burden of proof, except that if the suspension or termination of, or adverse personnel action against, a public employee occurs not later than the 90th day after the date on which the employee reports a violation of law, the suspension, termination, or adverse personnel action is presumed, subject to rebuttal, to be because the employee made the report.

(b) It is an affirmative defense to a suit under this chapter that the employing state or local governmental entity would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under this chapter of a violation of law.

Sec. 554.005. **Limitation Period.** [73rd Leg., 1993]

Except as provided by Section 554.006, a public employee who seeks relief under this chapter must sue no later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

Sec. 554.006. **Use of Grievance or Appeal Procedures.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under this chapter.

(b) The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

(c) Time used by the employee in acting under the grievance or appeal procedures is excluded, except as provided by Subsection (d), from the period established by Section 554.005.

(d) If a final decision is not rendered before the 61st day after the date procedures are initiated under Subsection (a), the employee may elect to:

(1) exhaust the applicable procedures under Subsection (a), in which event the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under this chapter; or

(2) terminate procedures under Subsection (a), in which event the employee must sue within the time remaining under Section 554.005 to obtain relief under this chapter.

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Sec. 554.008. **Civil Penalty.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A supervisor who in violation of this chapter suspends or terminate the employment of a public employee or takes an adverse personnel action against the employee is liable for a civil penalty not to exceed $15,000.

(b) The attorney general or appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(c) A civil penalty collected under this section shall be deposited in the state treasury.

(d) A civil penalty assessed under this section shall be paid by the supervisor and may not be paid by the employing governmental entity.

(e) The personal liability of a supervisor or other individual under this chapter is limited to the civil penalty that may be assessed under this section.

Sec. 554.009. **Notice to Employees.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A state or local governmental entity shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

(b) The attorney general shall prescribe the design and content of the sign required by this section.

Sec. 554.010. **Audit of State Governmental Entity After Suit.** [74th Leg., 1995]

(a) At the conclusion of a suit that is brought under this chapter against a state governmental entity subject to audit under Section 321.013 and in which the entity is required to pay $10,000 or more under the terms of a settlement agreement or final judgment, the attorney general shall provide to the state auditor's office a brief memorandum describing the facts and disposition of the suit.

(b) Not later than the 90th day after the date on which the state auditor's office receives the memorandum required by Subsection(a), the auditor may audit or investigate the state governmental entity to determine any changes necessary to correct the problems that gave rise to the whistleblower suit and shall recommend such changes to the Legislative Audit Committee, the Legislative Budget Board, and the governing board or chief executive officer of the entity involved. In conducting the audit or investigation, the auditor shall have access to all records pertaining to the suit.

TITLE 6. **PUBLIC OFFICERS AND EMPLOYEES.**

Subtitle A. **PROVISIONS GENERALLY APPLICABLE TO PUBLIC OFFICERS AND EMPLOYEES.**

Chapter 603. **PROVISION OF DOCUMENTS AND FEES OF OFFICE.**

Sec. 603.001. **Definition.** [73rd Leg., 1993]

In this chapter, "document" includes any instrument, paper, or other record.

Sec. 603.002. **Copies of Documents Available to Public.** [73rd Leg., 1993]

The secretary of state, Commissioner of the General Land Office, comptroller, state treasurer, commissioner of agriculture, Banking Commissioner, state librarian, or attorney general:

(1) shall furnish to a person on request a certified copy, under seal, of any document in the officer's office that is available under law to that person; and

(2) may not demand or collect a fee from an officer of the state for a copy of any document in the respective offices or for a certificate in relation to a matter in the respective offices if the copy is required in the performance of an official duty of the office of the state officer requesting the copy.

Sec. 603.003. **Copies for Claims Relating to Military Service.** [73rd Leg., 1993]

(a) A county clerk, district clerk, or other public official on request shall furnish without cost to a person or the person's guardian, dependent, or heir one or more certified copies of a document that is in the custody of or on file in the county clerk's, district clerk's, or other public official's office if:

(1) the person or the person's guardian, dependent, or heir is eligible to make a claim against the United States government because of service in the United States armed forces or an auxiliary service, including the maritime service or the merchant marine; and

(2) the document is necessary to prove the claim.

(b) The issuance of a certified copy under this section may not be considered in determining the maximum fee of the office.

Sec. 603.004. **Fees for Certificates or Copies of Documents.** [73rd Leg., 1993]

(a) Except as otherwise provided by law, the...state librarian...shall collect the following fees for the following services:

(1) a copy, other than a photographic copy, of a document in an office in English, for each page or fraction of a page, $1.50;

(2) a copy, other than a photographic copy, of a document in an office in a language other than English, for each page or fraction of a page, $2;

(3) a translated copy of a document in an office, the greater of $.03 for each word or $5;

(4) a copy of a plat or map in an office, a fee the officer of the office in which the copy is made may establish with reference to the amount of labor, supplies, and materials required; or

(5) a sealed certificate affixed to a copy, including a certificate affixed to a photographic copy, $1.

(b) The state librarian may charge for a photographic copy a fee determined by the Texas State Library and Archives Commission with reference to the amount of labor, supplies, and materials required.

Sec. 603.005. **Fee for Acknowledgment.** [73rd Leg., 1993]

An officer who is authorized by law to take acknowledgment or proof of a deed or other written instrument shall receive the same fee a notary public may receive for the same service.

Sec. 603.006. **Fee Book.** [73rd Leg., 1993]

An officer who by law may charge a fee for a service shall keep a fee book and shall enter in the book all fees charged for services rendered.

Sec. 603.007. **Bill for Fees.** [73rd Leg., 1993]

A fee under this chapter is not payable to a person until a clerk or officer produces, or is ready to produce, a bill in writing containing the details of the fee to the person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

Sec. 603.008. **Posting of Fees Required.** [73rd Leg., 1993]

A county judge, clerk of a district or county court, sheriff, justice of the peace, constable, or notary public shall keep posted at all times in a conspicuous place in the respective offices a complete list of fees the person may charge by law.

Sec. 603.009. **Disposition of Fees.** [73rd Leg., 1993]

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(d) The Texas State Library and Archives Commission shall retain fees collected under this chapter by the state librarian.

Sec. 603.010. **Overcharging of Fees; Penalty.** [73rd Leg., 1993]

An officer named in this chapter who demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received.

TITLE 7. **INTERGOVERNMENTAL RELATIONS.**

Chapter 791. **INTERLOCAL COOPERATION CONTRACTS.**

Subchapter A. **General Provisions.**

Sec. 791.001. **Purpose.** [72nd Leg., 1991]

The purpose of this chapter is to increase the efficiency and effectiveness of local governments by authorizing them to contract, to the greatest possible extent, with one another and with agencies of the state.

Sec. 791.002. **Short Title.** [72nd Leg., 1991]

This chapter may be cited as the Interlocal Cooperation Act.

Sec. 791.003. **Definitions.** [72nd Leg., 1991]

In this chapter:

(1) "Administrative functions" means functions normally associated with the routine operation of government, including tax assessment and collection, personnel services, purchasing, records management services, data processing, warehousing, equipment repair, and printing.

(2) "Interlocal contract" means a contract or agreement made under this chapter.

(3) "Government functions and services" means all or part of a function or service in any of the following areas:

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(F) library and museum services

(G) records center services

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(4) "Local government" means a:

(A) county, municipality, special district, or other political subdivision of this state or a state that borders this state; or

(B) combination of two or more of those entities.

(5) "Political subdivision" includes any corporate and political entity organized under state law.

Sec. 791.004. **Interlocal Contract; Dual Office Holding.** [72nd Leg., 1991]

A person acting under an interlocal contract does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

Sec. 791.005. **Effect of Chapter.** [72nd Leg., 1991]

This chapter does not effect an act done or a right, duty, or penalty existing before May 31, 1971.

Sec. 791.006. **Liability in Fire Protection Contract.** [72nd Leg., 1991]

If governmental units contract under this chapter to furnish or obtain fire protection services, the governmental unit that would have been responsible for furnishing the services in the absence of the contract is responsible for any civil liability that arises from the furnishing of those services.

Subchapter B. **General Interlocal Contracting Authority.**

Sec. 791.011. **Contracting Authority; Terms.** [72nd Leg., 1991]

(a) A local government may contract or agree with another local government to perform governmental functions and services in accordance with this chapter.

(b) A party to an interlocal contract may contract with a:

(1) state agency, as that term is defined by Section 771.002; or

(2) similar agency of a state that borders this state.

(c) An interlocal contract may be to:

(1) study the feasibility of the performance of a governmental function or service by an interlocal contract; or

(2) provide a governmental function or service that each party to the contract is authorized to perform individually.

(d) An interlocal contract must:

(1) be authorized by the governing body of each part to the contract;

(2) state the purpose, terms, rights, and duties of the contracting parties; and

(3) specify that each party paying for the performance of governmental functions or services must make those payments from currents revenues available to the paying party.

(e) An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract.

(f) An interlocal contract may be renewed annually.

Sec. 791.012. **Local Law Applicable to Contracting Parties.** [72nd Leg., 1991]

Local governments that are parties to an interlocal contract for the performance of a service may, in performing the service, apply the local law of a party as agreed by the parties.

Sec. 791.013. **Contract Supervision and Administration.** [72nd Leg., 1991; Amended 74th Leg., 1995]

(a) The parties to an interlocal contract may create an administrative agency or designate an existing local government to supervise the performance of the contract.

(b) The agency or designated local government may employ personnel, perform administrative activities, and provide administrative services necessary to perform the interlocal contract.

(c) All property that is held and used for a public purpose by the administrative agency or designated local government is exempt from or subject to taxation in the same manner as if the property were held and used by the participating political subdivisions.

Sec. 791.014. **Approval Requirement for Counties.** [72nd Leg., 1991]

(a) Before beginning a project to construct, improve, or repair a building, road, or other facility under an interlocal

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contract, the commissioners court of a county must give specific written approval for the project.

(b) The approval must:

(1) be given in a document other than the interlocal contract;

(2) describe the type of project to be undertaken; and

(3) identify the project's location.

(c) The county may not accept and another local government may not offer payment for a project undertaken without approval required by this section.

(d) A county is liable to another local government for the amount paid by the local government to the county for a project requiring approval under this section if:

(1) the county begins the project without the approval required by this section; and

(2) the local government makes the payment before the project is begun by the county.

Subchapter C. **Specific Interlocal Contracting Authority.**

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Sec. 791.025. **Contracts for Purchases.** [72nd Leg., 1991; Amended 74th Leg., 1995]

(a) A local government may agree with another local government or with the state or a state agency, including the State Purchasing and General Service Commission, to purchase goods and services.

(b) A local government that purchases goods and services under this section satisfies the requirement of the local government to seek competitive bids for the purchase of the good and services.

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Sec. 791.029. **Contracts for Regional Records Centers.** [72nd Leg., 1991]

(a) By resolution of its governing body, a political subdivision of the state may contract with another political subdivision of the state to participate in the ownership, construction, and operation of a regional records center.

(b) Before acquiring or constructing the records center, a participating political subdivision may issue bonds to finance the acquisition and construction of the records center in the manner prescribed by law for the issuance of permanent improvement bonds.

(c) The records center may not be used to store a record whose retention period is listed as permanent on a records retention schedule issued by the Texas State Library and Archives Commission under Section 441.158, unless the center meets standards for the care and storage of records of permanent value established by rules adopted by the commission under Section 203.048, Local Government Code.

(d) The Texas State Library and Archives Commission shall provide assistance and advice to local governments in the establishment and design of regional records centers.

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Title 10. **GENERAL GOVERNMENT.**

Subtitle A. **ADMINISTRATIVE PROCEDURE AND PRACTICE.**

Chapter 2004 **REPRESENTATION BEFORE STATE AGENCIES.**

Sec. 2004.001. **Definitions.** [73rd Leg., 1993]

In this chapter:

(1) "Individual" includes a member of the legislature, any other state officer, and a state employee.

(2) "State agency" means an office, department, commission, or board of the executive branch of state government.

Sec. 2004.002. **Registration.** [73rd Leg., 1993]

(a) An individual who appears before a state agency or contacts in person an officer or employee of a state agency on behalf of an individual, firm, partnership, corporation, or association about a matter before that agency shall register with the state agency:

(1) the name and address of the registrant;

(2) the name and address of the person on whose behalf the appearance or contact is made; and

(3) a statement on whether the registrant has received or expects to receive any money, thing of value, or financial benefit for the appearance or contact.

(b) Each state agency shall provide for recording the registration in a record and shall maintain the record.

Sec. 2004.003. **Exemptions From Registration.** [73rd Leg., 1993]

An individual is not required to register under Section 2004.002 because of:

(1) the individual's appearance or contact on an interagency matter if the individual is an officer or employee of the state agency; or

(2) a contact by the individual with the state agency or an officer or employee of the agency if the contact:

(A) is solely for obtaining information and an attempt is not made to influence the action of an officer or employee of the agency;

(B) consists of making an appearance and participating at a public hearing;

(C) is made in a matter in which a pleading or other instrument that discloses the individual's representation is on file with the agency; or

(D) is one for which the individual does not receive compensation or any thing of value.

Sec. 2004.004. **Reporting and Filing of Registrations.** [73rd Leg., 1993]

(a) A state agency shall prepare a report that includes the information from all registrations filed with the agency in a calendar quarter.

(b) The agency shall file the report with the secretary of state not later than the 10th day of the month after the end of the calendar quarter for which the report was prepared.

(c) The secretary of state shall index each report and keep the report on file for four years after the date the report is filed.

Sec. 2004.005. **Penalty.** [73rd Leg., 1993]

(a) An individual commits an offense if the individual does not register as required by this chapter.

(b) An offense under this chapter is a misdemeanor punishable by:

(1) a fine of not more than $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and imprisonment.

Subtitle B. **INFORMATION AND PLANNING.**

Chapter 2052. **STATE AGENCY REPORTS AND PUBLICATIONS.**

Subchapter A. **Reports for Legislature or Governor.**

Sec. 2052.002. **Distribution of Publications to Legislators.** [73rd Leg., 1993]

(a) To avoid waste in the duplication and distribution of state agency publications, a state agency that issues a publication relating to the work of the agency and distributes the publication to members of the legislature shall send to each member before distributing the publication a written notice to determine whether the member wants to receive the publication.

(b) The state agency shall include with the notice a brief written summary of the publication.

(c) A member who elects to receive the publication shall notify the state agency.

(d) This section does not apply to a report that is required by law.

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Subchapter C. **Distribution of Publications.**

Sec. 2052.201. **Definitions.** [73rd Leg., 1993]

In this subchapter:

(1) "Person" means an individual, association, corporation, or state agency.

(2) "Publication" means printed matter containing news or other information and includes a magazine, newsletter, newspaper, pamphlet, or report.

(3) "Publication request form" means a form that provides a means of requesting a state agency's publications.

(4) "State agency" means a department, commission, board, office, or other agency that:

(A) is in the executive branch of state government;

(B) has authority that is not limited to a geographical portion of the state; and

(C) was created by the constitution or a statute of this state.

Sec. 2052.202. **Publications Request Form.** [73rd Leg., 1993; Amended 74th Leg., 1995]

A state agency that distributes publications to a person shall distribute a publication request form on request or with each copy of the last publication that it distributes before January 1 of each year.

Sec. 2052.203. **Publication Distribution List.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) A state agency that receives a completed publication request form or other written request for its publications may place the name of the requestor on its publication distribution list. A state agency may not place the name of a person or other entity on its publication distribution list unless the state agency has received a completed publication request form or other written request from that person or entity.

(b) After January 1 of each year a state agency shall compile a publication distribution list from the completed publication request forms and other written requests received for publications for that calendar year.

Sec. 2052.204. **Distribution.** [73rd Leg., 1993]

A state agency may distribute a copy of a publication to a person or other entity that is not listed on the publication distribution list only if:

(1) the person or entity has requested orally or in writing a specific copy of the publication; or

(2) the person is newly elected or appointed state officer, newly appointed executive head of a state agency, or newly established state agency.

Sec. 2052.205. **Copies to Library.** [73rd Leg., 1993]

(a) A state agency shall send to the Legislative Reference Library five copies of each publication that it distributes.

(b) The library shall make the publications available to its users.

Sec. 2052.206. **Applicability to Information Required by Law.** [73rd Leg., 1993]

This subchapter does not apply to the distribution of information required by law.

Subchapter D. **Publication Production and Charges.**

Sec. 2052.301. **Sales Charge.** [73rd Leg., 1993]

(a) A department or agency in the executive branch of government, unless otherwise specifically directed by statute, may set and collect a sales charge for a publication or other printed matter if the charge is in the public interest.

(b) The amount of the sales charge for a publication or other printed matter not specifically set by statute may not be greater than an amount considered sufficient by the publishing department or agency to reasonable reimburse the state for the actual expense of printing the publication or printed matter.

(c) Money collected under this section shall be deposited in the fund from which the cost of printing the publication or

other printed matter was paid. The deposited money is subject to legislative appropriation.

Sec. 2052.302. **Prohibition of Economic Benefit.** [73rd Leg., 1993]

(a) In accordance with Article XVI, Section 21, of the Texas Constitution, an officer or employee of the state may not, directly or indirectly, profit by or have a pecuniary interest in the preparation, printing , duplication, or sale of a publication or other printed matter issued by a department or agency of the executive branch.

(b) A person who violates this section shall be dismissed from state employment.

Sec. 2052.303. **Use of Recycled Paper.** [73rd Leg., 1993]

(a) A state agency that issues publications, including reports, for general distribution, including distribution to members of the legislature, shall used recycled paper to produce the publications to the greatest extent possible when the use of recycled paper is cost-effective.

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Subtitle D. **STATE PURCHASING AND GENERAL SERVICES.**

Chapter 2155 **PURCHASING: GENERAL RULES AND PROCEDURES.**

Subchapter B. **General Purchasing Requirements, Procedures, and Programs.**

Sec. 2155.061. **Commission Purchasing System.** [74th Leg., 1995]

(a) The commission shall acquire by purchase, lease, rental, or another manner all goods and services for a state agency, including a purchase that does not require a competitive bid or a spot purchase.

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Sec. 2155.063. **Competitive Bidding Requirement.** [74th Leg., 1995]

Except as otherwise provided by this subtitle, a purchase of or contract for goods or services shall, whenever possible, be accomplished through competitive bidding.

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Subchapter C. **Delegations of and Exclusions From Commission's Purchasing Authority and Certain Exemptions from Competitive Bidding.**

Sec. 2155.131 **Delegation of Authority to State Agencies.** [74th Leg., 1995]

The commission may delegate purchasing functions to a state agency.

Sec. 2155.132. **Purchases Less Than Specified Monetary Amount.** [74th Leg., 1995]

(a) A state agency is delegated the authority to purchase goods if the purchase does not exceed $5,000. The agency may, however, use the commission's services for those purchases.

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(d) Competitive bidding, whether formal or informal, is not required for a purchase by a state agency if the purchase does not exceed $1,000, or a greater amount prescribed by commission rule.

(e) Goods purchased under this section may not include:

(1) an item for which a contract has been awarded...unless the quantity purchased is less than the minimum quantity specified in the contract;

(2) an item required by statute to be purchased from a particular source; or

(3) a scheduled item that has been designated for purchase by the commission.

(f) Large purchases may not be divided into small lot purchases to meet the dollar limits prescribed by this section. The commission may not require that unrelated purchases be combined into one purchase order to exceed the dollar limits prescribed by this section.

(g) A state agency making a purchase under this section for which competitive bidding is required must:

(1) attempt to obtain at least three competitive bids from sources that normally offer for sale the goods being purchased; and

(2) comply with Subchapter E.

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Sec. 2155.139. **Exemptions for Certain Libraries and Health Facilities.** [74th Leg., 1995]

(a) Section 2155.061 does not apply to an acquisition if:

(1) the acquisition is for a:

(A) library operated as a part of a university system or institution of higher education; or

(B) state-owned hospital or clinic; and

(2) the goods or services acquired are:

(A) serial and journal subscriptions;

(B) library materials, including books not available under a statewide contract and papers;

(C) library services, including binding services not available under a statewide contract; or

(D) library equipment and supplies.

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Sec. 2155.140. **Purchase From Gift or Grant Not Within Commission's Purchasing Authority.** [74th Leg., 1995]

The commission's authority does not apply to a purchase of goods or services from a gift or grant, including an industrial or federal grant or contract in support of research.

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Subchapter D. **Extension of Commission Purchasing Services to Other Entities.**

Sec. 2155.203. **Purchases by Legislature and Legislative Agencies.** [74th Leg., 1995]

A house of the legislature, or an agency, council, or committee of the legislature, including...the Legislative Reference Library, may use the commission's purchasing services for purchasing goods and services, including items covered by Section 21, Article XVI, Texas Constitution.

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Subchapter G. **Payment Provisions.**

Sec. 2155.383. **Advance Payments to State or Federal Agency.** [74th Leg., 1995]

A state agency may make an advance payment to a federal or other state agency for goods purchased from the agency if an advance payment will expedite delivery of the goods.

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Sec. 2155.386. **Prepayment for Library Materials by Institution of Higher Education.** [74th Leg., 1995]

An institution of higher education may pay for books and other published library materials before receiving them if reasonably necessary for the efficient operation of the institution's libraries.

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Chapter 21 **STATE BUILDINGS, GROUNDS, AND PROPERTY.**

Subchapter C. **Allocation of Space.**

Sec. 2165.104. **Space Use Study; Limitation on Allocation of Space.** [74th Leg., 1995]

(a) The commission periodically shall study the space requirements of state agencies that occupy space under the commission's charge and control, including state-owned space and space leased from other sources.

(b) The commission shall use the results of the study to:

(1) determine the optimal amount of space required for various state agency uses; and

(2) allocate space to state agencies in the best and most efficient manner possible.

(c) To the extent possible without sacrificing critical public or client services, the commission may not allocate usable office space, as defined by the commission, to a state agency in an amount that exceeds an average of 153 square feet per agency employee for each agency site. This subsection does not apply to:

••••

(2) warehouse space;

••••

(4) storage space exceeding 1,000 gross square feet;

(5) library space;

(6) space for hearing rooms used to conduct hearings required under the administrative procedure law, Chapter 2001; or

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Chapter 2172. **MISCELLANEOUS GENERAL SERVICES.**

Sec. 2172.004. **Archives.** [74th Leg., 1995]

The commission may store and display the archives of Texas.

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Subtitle F. **STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT.**

Chapter 2251 **PAYMENT FOR GOODS AND SERVICES.**

Subchapter A. **General Provisions.**

Sec. 2251.002. **Exceptions.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) This chapter does not apply to a payment made by a governmental entity, vendor, or subcontractor if:

(1) there is a bona fide dispute between the political subdivision and a vendor, contractor, subcontractor, or supplier about the goods delivered or the services performed that causes the payment to be late;

(2) there is a bona fide dispute between a vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the services performed that causes the payment to be late;

(3) the terms of a federal contract, grant, regulation, or statute prevent the governmental entity from making a timely payment with federal funds; or

(4) the invoice is not mailed to the person to whom it is addressed in strict accordance with any instruction on the purchase order relating to the payment.

(b) This chapter does not affect Chapter 2253.

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Subchapter B. **Payments and Interest.**

Sec. 2251.021. **Time for Payment by Governmental Entity.** [73rd Leg., 1993; Amended 74th Leg., 1995]

(a) Except as provided by Subsection (b), a payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the 31st day after the later of:

(1) the date the governmental entity receives the goods under the contract;

(2) the date the performance of the service under the contract is completed; or

(3) the date the governmental entity receives an invoice for the goods or services.

(b) A payment under a contract executed on or after September 1, 1993, owed by a political subdivision whose governing body meets only once a month or less frequently is

overdue on the 46th day after the later event described by Subsections (a)(1) through (3).

(c) For a contract executed on or after July 1, 1986, and before September 1, 1987, a payment by a governmental entity under that contract is overdue on the 46th day after the later event described by Subsections (a)(1) through (3).

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Sec. 2251.024. **Mailing of Payment.** [73rd Leg., 1993]

A payment is considered to be mailed on the date the payment is postmarked.

Sec. 2251.025. **Interest on Overdue Payment.** [73rd Leg., 1993]

(a) A payment beings to accrue interest on the date the payment is overdue.

(b) An overdue payment bears interest at the rate of one percent each month.

(c) Interest on an overdue payment stops accruing on the date the governmental entity or vendor mails or electronically transmits the payment.

Sec. 2251.026. **Payment of Interest by State Agency.** [73rd Leg., 1993]

If the warrant for a payment the originating state agency owes is not mailed or electronically transmitted before the payment is overdue, the agency is liable for an interest payment that accrues under this chapter.

Sec. 2251.027. **Payment of Interest by Political Subdivision.** [73rd Leg., 1993]

(a) A political subdivision shall compute interest imposed on the political subdivision under this chapter.

(b) The political subdivision shall pay the interest at the time the payment is made on the principal.

(c) The political subdivision shall submit the interest payment with the net amount due for goods and services.

(d) The political subdivision may not require a vendor to petition, bill, or wait an additional day to receive the interest due.

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Sec. 2251.029. **Partial Payment.** [73rd Leg., 1993]

(a) The unpaid balance of a partial payment made within the period provided by this chapter accrues interest as provided by Section 2251.025 unless the balance is in dispute.

(b) Section 2251.042 applies to a disputed balance.

Sec. 2251.030. **Early Payment Discount.** [73rd Leg., 1993]

(a) The intent of the legislature is that a governmental entity should take advantage of an offer for an early payment discount.

(b) A governmental entity may not take an early payment discount a vendor offers unless the governmental entity makes a full payment within the discount period.

(c) If a governmental entity takes an early payment discount later, the unpaid balance accrues interest beginning on the date the discount offer expires.

Subchapter C. **Claims and Disputes.**

Sec. 2251.041. **Claim for Interest Imposed Against State Agency.** [73rd Leg., 1993]

(a) A vendor must present a claim for interest imposed against an originating state agency to the agency not later than the sixth month after the date the vendor receives payment.

(b) The vendor must accompany the claim with the envelope in which the warrant was received or other proof showing the date the payment was mailed or transmitted by the agency.

Sec. 2251.042. **Disputed Payment.** [73rd Leg., 1993]

(a) A governmental entity shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than 21st day after the date the entity receives the invoice.

(b) If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor beginning on the date under Section 2251.021 that the payment for the invoice is overdue.

(c) If a dispute is resolved in favor of the governmental entity, the vendor shall submit a corrected invoice that must be paid in accordance with Section 2251.021. The unpaid balance accrues interest as provided by this chapter if the corrected invoice is not paid by the appropriate date.

Sec. 2251.043. **Attorney Fees.** [73rd Leg., 1993]

In a formal administrative or judicial action to collect an invoice payment or interest due under this chapter, the opposing party, which may be the governmental entity or the vendor, shall pay the reasonable attorney fees of the prevailing party.

Subtitle F. **STATE AND LOCAL CONTRACTS AND FUND MANAGEMENT.**

Chapter 2254 **PROFESSIONAL AND CONSULTING SERVICES.**

Subchapter A. **Professional Services.**

Sec. 2254.001. **Short Title.** [73rd Leg., 1993]

This subchapter may be cited as the Professional Services Procurement Act.

Sec. 2254.002. **Definitions.** [73rd Leg., 1993]

In this subchapter:

(1) "Governmental entity" means:

(A) a state agency or department;

(B) a district, authority, county, municipality, or other political subdivision of the state; or

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(2) "Professional services" means services:

(A) within the scope of the practice, as defined by state law, of:

(I) accounting;

(ii) architecture;

(iii) land surveying;

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(vi) professional engineering; or

(B) provided in connection with the professional employment or practice of a person who is licensed as:

(I) a certified public accountant;

(ii) an architect;

(iii) a land surveyor;

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(vi) a professional engineer.

Sec. 2254.003. **Selection of Provider; Fees.** [73rd Leg., 1993]

(a) A governmental entity may not select a provider of professional services or a group or association of providers or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award:

(1) on the basis of demonstrated competence and qualifications to perform the services; and

(2) for a fair and reasonable price.

(b) The professional fees under the contract:

(1) must be consistent with and not higher than the recommended practices and fees published by the applicable professional associations; and

(2) may not exceed any maximum provided by law.

Sec. 2254.004. **Contract for Professional Services of Architect or Engineer.** [73rd Leg., 1993]

(a) In procuring architectural or engineering services, a governmental entity shall:

(1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and

(2) then attempt to negotiate with that provider a contract at a fair and reasonable price.

(b) If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural or engineering services, the entity shall:

(1) formally end negotiations with that provider;

(2) select the next most highly qualified provider; and

(3) attempt to negotiate a contract with that provider at a fair and reasonable price.

(c) The entity shall continue the process described in Subsection (b) to select and negotiate with providers until a contract is entered into.

Sec. 2254.005. **Void Contract.** [73rd Leg., 1993]

A contract entered into or an arrangement made in violation of this subchapter is void as against public policy.

Subchapter B. **Consulting Services.**

Sec. 2254.021. **Definitions.** [73rd Leg., 1993; Amended 74th Leg., 1995]

In this subchapter:

(1) "Consulting service" means the service of studying or advising a state agency under a contract that does not involve the traditional relationship of employer and employee.

(2) "Major consulting services contract" means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed $10,000.

(3) "Private consultant" means a person that provides or proposes to provide a consulting service.

(4) "State agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

Sec. 2254.022. **Interpretation of Subchapter.** [73rd Leg., 1993]

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(b) This subchapter does not:

(1) discourage state agencies from using private consultants if the agencies reasonably foresee that the use of private consultants will produce a more efficient and less costly operation or project;

(2) prohibit the making of a sole-source contract for consulting services if a proposal is not received from a competent, knowledgeable, and qualified private consultant at a reasonable fee, after compliance with this subchapter; or

(3) require or prohibit the use of competitive bidding procedures to purchase consulting services.

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Sec. 2254.026. **Contract with Private Consultant.** [73rd Leg., 1993]

A state agency may contract with a private consultant only if:

(1) there is a substantial need for the consulting services; and

(2) the agency cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with another state agency.

Sec. 2254.027. **Selection of Private Consultant.** [73rd Leg., 1993]

In selecting a private consultant, a state agency shall:

(1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the service; and

(2) if other considerations are equal, give preference to a private consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Sec. 2254.028. **Notice of Intent: Major Consulting Service Contract.** [73rd Leg., 1993]

(a) Before entering into a major consulting services contract, a state agency shall:

(1) notify the Legislative Budget Board and the governor's Budget and Planning Office that the agency intends to contract with a private consultant;

(2) give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Sections 2254.026 and 2254.027; and

(3) obtain a funding of fact from the governor's Budget and Planning Office that the consulting services are necessary.

(b) A major consulting services contract that a state agency enters into without first obtaining the finding required by Subsection (a)(3) is void.

Sec. 2254.029. **Publication in Texas Register Before Entering Into Major Consulting Services Contract.** [73rd Leg., 1993]

(a) Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:

(1) an invitation for private consultants to provide offers of consulting services;

(2) the name of the individual who should be contacted by a private consultant that intends to make an offer;

(3) the closing date for the receipt of offers; and

(4) the procedure by which the state agency will award the contract.

(b) If the consulting services sought by a state agency relate to services previously provided by a private consultant, the agency shall disclose that fact in the invitation required by Subsection (a). If the state agency intends to award the contract for the consulting services to a private consultant that previously provided the services, unless a better offer is received, the agency shall disclose its intention in the invitation required by Subsection (a).

Sec. 2254.030. **Publication in Texas Register After Entering Into Major Consulting Services Contract.** [73rd Leg., 1993]

Not later than the 10th day after the date of entering into a major consulting services contract, the state agency shall file with the secretary of state for publication in the Texas Register:

(1) a description of the activities that the private consultant will conduct;

(2) the name and business address of the private consultant;

(3) the total value and the beginning and ending dates of the contract; and

(4) the dates on which documents, films, recordings, or reports that the private consultant is required to present to the agency are due.

Sec. 2254.031. **Renewal; Amendment; Extension.** [73rd Leg., 1993]

(a) A state agency that intends to renew a major consulting services contract shall:

(1) file with the secretary of state for publication in the Texas Register the information required by Section 2254.030 not later than the 10th day after the date the contract is renewed if the renewal contract is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the renewal contract is a major consulting services contract.

(b) A state agency that intends to renew a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than $10,000.

(c) A state agency that intends to amend or extend a major consulting services contract shall:

(1) not later than the 10th day after the date the contract is amended or extended, file the information required by Section 2254.030 with the secretary of state for publication in the Texas Register if the contract after the amendment or extension is not a major consulting services contract; or

(2) comply with Sections 2254.028 and 2254.029 if the contract after the amendment or extension is a major consulting services contract.

(d) A state agency that intends to amend or extend a contract that is not a major consulting services contract shall comply with Sections 2254.028 and 2254.029 if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than $10,000.

Sec. 2254.034. **Contract Void.** [73rd Leg., 1993]

(a) A contract entered into in violation of Sections 2254.029 through 2254.031 is void.

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Sec. 2254.035. **Dividing Contracts.** [73rd Leg., 1993]

(a) A state agency may not divide a consulting services contract into more than one contract to avoid the requirements of this subchapter.

(b) This section applies to all consulting services contracts, including renewals, amendments, and extensions of consulting services contracts.

Sec. 2254.036. **Archives.** [73rd Leg., 1993]

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(b) Copies of all documents, films, recording, or reports compiled by the private consultant shall be filed with the Texas State Library and shall be retained by the library for at least five years.

(c) The Texas Sate Library shall list each document, film, recording, and report given to it under Subsection (b) and shall file the list at the end of each calendar quarter with the secretary of state for publication in the Texas Register.

Sec. 2254.037. **Reports.** [73rd Leg., 1993]

As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to the Legislative Budget Board and the governor's Budget and Planning Office on any actions taken in response to the recommendations of any private consultant with whom the state agency contracts during the previous biennium.

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Title 2. **HEALTH.**
Subtitle E. **HEALTH CARE COUNCILS AND RESOURCE CENTERS.**
Chapter 106. **CENTER FOR RURAL HEALTH INITIATIVES.**
Subchapter B. **Administrative Provisions.**

Sec. 106.025. **Duties and Powers.** [72nd Leg., 1991; Amended 74th Leg., 1995]

(a) The center shall:

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(11) work with state agencies, universities, and private interest groups to conduct and promote research on rural health issues maintain and collect a timely data base, and develop and maintain a rural health resource library;

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Title 5. **SERVICES FOR THE BLIND AND VISUALLY HANDICAPPED.**
Chapter 91. **TEXAS COMMISSION FOR THE BLIND.**
Subchapter E. **Central Media Depository.**

Sec. 91.081. **Purpose.** [66th Leg., 1979; Amended 69th Leg., 1985]

(a) The purpose of this subchapter is to establish a comprehensive central state depository for Braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library, the Central Education Agency, the Texas Commission for the Blind, volunteer organizations involved in the production of Braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

(b) It is the intent of this subchapter to allow various agencies and organizations interested in or responsible for such services to work together cooperatively in one facility without requiring one central management.

Sec. 91.082. **Establishment of Central Media Depository.** [Amended 66th Leg., 1979]

(a) The Texas State Library and Archives Commission shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by blind and visually handicapped individuals or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the library and archives commission, the agencies and organizations maintaining and operating the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the program.

Sec. 91.083. **Ancillary Services.** [Amended 66th Leg., 1979]

The library and archives commission shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations.

Sec. 91.084. **Funding.** [66th Leg., 1979]

The cost of establishing and operating the central media depository shall be paid with:

(1) funds appropriated by the legislature for that purpose;

(2) gifts, grants, bequests, and donations received by cooperating agencies for the establishment and support of the depository;

(3) reasonable fees customarily charged for services by the agencies and organizations using or occupying the facility; and

(4) funds budgeted by the cooperating agencies and organizations for that purpose pursuant to interagency contracts and agreements.

Title 8. **RIGHTS AND RESPONSIBILITIES OF THE HANDICAPPED.**
Chapter 121. **PARTICIPATION IN SOCIAL AND ECONOMIC ACTIVITIES.**

Sec. 121.001. **State Policy.** [66th Leg., 1979]

The policy of the state is to encourage and enable physically handicapped persons to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.

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Sec. 121.002. **Definitions.** [66th Leg., 1979; Amended 74th Leg., 1995]

In this chapter:

(1) "White cane" means a cane or walking stick which is metallic or white in color or white tipped with some contrasting color, and which is carried by a blind person to assist the blind person in traveling from place to place.

(2) "Assistance dog" means a dog that is specially trained or equipped to help a blind or handicapped person, and that:

(A) is used by a blind or handicapped person who has satisfactorily completed a specific course of training in the use of the dog; and

(B) has been trained by an organization generally recognized by agencies involved in the rehabilitation of the blind or handicapped as reputable and competent to provide dogs with training of this type.

(3) "Public facilities" includes streets, highways, sidewalks, walkways, all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation, hotels, motels, or other places of lodging, public buildings maintained by any unit or subdivision of government, buildings to which the general public is invited, college dormitories and other educational facilities, restaurants or other places where food is offered for sale to the public, and all other places of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

(4) "Handicapped person" means a person who has a mental or physical handicap, including mental retardation, hardness of hearing, deafness, speech impairment, visual handicap, being crippled, or any other health impairment which requires special ambulatory devices or services.

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Sec. 121.003. **Discrimination Prohibited.** [66th Leg., 1979; Amended 74th Leg., 1995]

(a) Subject only to limitations and conditions established by law and applicable alike to all persons, persons who are physically handicapped have the same right as the able-bodied to the full use and enjoyment of any public facility in the state.

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(c) No person who is blind or physically handicapped may be denied admittance to any public facility in the state because of the blind or handicapped person's use of a white cane, assistance dog, wheelchair, crutches, or other device of assistance in mobility, or because the person is blind or handicapped.

(d) The discrimination prohibited by this section include discrimination through an open and obvious refusal to allow a blind or handicapped person to use or be admitted to any public facility, as well as discrimination based on a ruse or subterfuge calculated to prevent or discourage a blind or handicapped person from using or being admitted to a public facility. Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by blind or handicapped persons who, except for their blindness or handicaps or use of assistance dogs or other devices for assistance in travel, would fall within the designated class. Lists containing the names of persons who desire to use particular public facilities may not be composed or manipulated so as to deny a blind or handicapped person a fair and equal opportunity to use or be admitted to any public facility.

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(g) It is the policy of the state that the blind, the visually handicapped and the otherwise physically disabled be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

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Chapter 16. **FARM MUTUAL INSURANCE COMPANIES.**

Art. 16.01. **Farm Mutual Insurance; Definitions.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

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(b) Farm mutual insurance companies may insure rural and urban dwellings and attendant outhouses and yard buildings, and all their contents for home and personal use, musical instruments and libraries....

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Chapter 17. **COUNTY MUTUAL INSURANCE COMPANIES.**

Art. 17.01. **County Mutual Insurance Companies; Definitions.** [52nd Leg., 1951]

County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant outhouses and yard buildings and all their contents for home and personal use–including family vehicles, musical instruments and libraries;

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Chapter 21. **GENERAL PROVISIONS.**
Subchapter E. **Miscellaneous Provisions.**

Art. 21.49-14. **Texas Nonprofit Organizations Liability Pool.** [72nd Leg., 1991]

Sec. 1 **Definitions.**

In this article:

(1) "Pool" means the Texas Nonprofit Organizations Liability Pool.

(2) "Fund" means the Texas nonprofit organizations liability fund.

(3) "Board" means the board of trustees of the pool.

(4) "Nonprofit organization" means an organization that is exempt under Section 501(c)(3) or (4), Internal Revenue Code of 1986.

Sec. 2 **Creation of Pool.**

On written agreement of the chief executive officers of not fewer than 15 nonprofit organizations, the Texas Nonprofit Organizations Liability Pool is created to provide primary and excess liability insurance coverage as provided by this article.

Sec. 3. **Scope of Coverage.**

(a) The pool shall insure a nonprofit organization and its officers and employees against liability for acts and omissions under the laws of this state.

(b) Under the liability insurance coverage, the pool shall provide primary and excess liability coverage to nonprofit organizations that qualify under this article and the plan of operation for the pool.

(c) The pool may provide primary liability coverage to a nonprofit organization in an amount not to exceed $250,000. The pool may provide excess liability coverage to a nonprofit organization in an amount that is found by the board to be actuarially sound.

(d) The pool may participate in the evaluation, settlement, and defense of a claim against a nonprofit organization insured by the pool if the claim is covered by pool coverage.

(e) Under pool coverage, the pool is liable on any claim only to the limit provided by the coverage of the nonprofit organization against which the claim is made.

Sec. 4. **Participation in the Pool.**

A nonprofit organization is entitled to coverage from the pool on:

(1) submitting a complete application;

(2) providing any other information required by the pool;

(3) meeting the underwriting standards established by the pool; and

(4) paying the premiums required for the coverage.

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Sec. 16. **Coverage period.**

(a) On accepting coverage from the pool, a nonprofit organization shall maintain that coverage for a period not less than 24 calendar months following the month the coverage is issued.

(b) A nonprofit organization that voluntarily discontinues coverage in the pool may not again obtain coverage from the pool for at least 12 calendar months following the month the coverage was discontinued.

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Sec. 18. **Punitive Damages.**

Liability insurance coverage provided by the pool may not provide coverage for punitive damages.

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Title 2. **PROTECTION OF LABORERS.**
Subtitle A. **EMPLOYMENT DISCRIMINATION.**
Chapter 21. **EMPLOYMENT DISCRIMINATION.**
Subchapter A. **General Provisions.**

Sec. 21.001. **Purposes.** [73rd Leg., 1993; Amended 74th Leg., 1995]

The general purposes of this chapter are to:

(1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000e et seq.);

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(3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments (42 U.S.C. Section 12101 et seq.):

(4) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;

(5) make available to the state the full productive capacities of persons in this state;

(6) avoid domestic strife and unrest in this state;

(7) preserve the public safety, health, and general welfare; and

(8) promote the interests, rights, and privileges of persons in this state.

Sec. 21.002. **Definitions.** [73rd Leg., 1993; Amended 74th Leg., 1995]

In this chapter:

(1) "Bona fide occupational qualification" means a qualification:

(A) reasonably related to the satisfactory performance of the duties of a job; and

(B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

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(6) "Disability" means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment. The term does not include:

(A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or

(B) a currently communicable disease or infection, including acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.

(8) "Employer" means:

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(D) a county, municipality, state agency, or state instrumentality, including a public institution of education, regardless of the number of individuals employed.

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(12) "Political subdivision" means a county or municipality.

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Subchapter B. **Unlawful Employment Practices.**

Sec. 21.051. **Discrimination by Employer.** [73rd Leg., 1993]

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

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Sec. 21.054. **Admission or Participation in Training Program.** [73rd Leg., 1993]

(a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, or age in admission to or participation in the program.

(b) The prohibition against discrimination because of age in this section applies only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

Sec. 21.055. **Retaliation.** [73rd Leg., 1993]

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Sec. 21.056. **Aiding or Abetting Discrimination.** [73rd Leg., 1993]

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice.

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Sec. 21.058. **Prevention of Compliance.** [73rd Leg., 1993]

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency willfully obstructs or prevents a person from complying with this chapter or a rule or order issued under this chapter.

Sec. 21.059. **Discriminatory Notice or Advertisement.** [73rd Leg., 1993]

(a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

(b) This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Sec. 21.060. **Violation of Conciliation Agreement.** [73rd Leg., 1993]

A party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of the conciliation agreement.

Sec. 21.061. **Insufficient Evidence of Unlawful Practice.** [73rd Leg., 1993]

In the absence of other evidence of an unlawful employment practice, evidence of the employment of one person in place of another is not sufficient to establish an unlawful employment practice.

Subchapter C. **Application; Exceptions.**

Sec. 21.101. **Age Discrimination Limited to Individuals of Certain Age.** [73rd Leg., 1993]

Except as provided by Section 21.054, the provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

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Sec. 21.103. **Compulsory Retirement Permitted for Certain Employees.** [73rd Leg., 1993]

This chapter does not prohibit the compulsory retirement of an employee who is:

(1) at least 65 years of age;

(2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and

(3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least $27,000.

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Sec. 21.105. **Discrimination Based on Disability.** [73rd Leg., 1993]

A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

Sec. 21.106. **Sex Discrimination.** [73rd Leg., 1993]

(a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.

(b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.

Sec. 21.107. **Effect on Abortion Benefits.** [73rd Leg., 1993]

This chapter does not:

(1) require an employer to pay for health insurance benefits for abortion unless the life of the mother would be endangered if the fetus were carried to term;

(2) preclude an employer from providing abortion benefits;

(3) affect a bargaining agreement relating to abortion.

Sec. 21.108. **Discrimination Based on Religion.** [73rd Leg., 1993]

A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Sec. 21.109. **Employment by Religious Organization.** [73rd Leg., 1993]

(a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting employment or giving a preference to members of the same religion.

(b) Subchapter B does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the performance of religious activities by the corporation, association, or society;

Sec. 21.110. **Discrimination Based on National Origin.** [73rd Leg., 1993]

A provision in this chapter referring to discrimination because of national origin or on the basis of national origin includes discrimination because of or on the basis of the national origin of an ancestor.

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Sec. 21.112. **Employees at Different Locations.** [73rd Leg., 1993]

An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Sec. 21.113. **Imbalance Plan not Required.** [73rd Leg., 1993]

This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of the race, color, disability, religion, sex, national origin, or age because of an imbalance between:

(1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, or age:

(A) employed by an employer;

(B) referred or classified for employment by an employment agency or labor organization;

(C) admitted to membership or classified by a labor organization; or

(D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and

(2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, or age in:

(A) a community, this state, a region, or other area; or

(B) the available work force in a community, this state, a region, or other area.

Sec. 21.114. **Plan to End Discriminatory School Practices.** [73rd Leg., 1993]

A public school official does not commit an unlawful employment practice by adopting or implementing a plan reasonably designed to end discriminatory school practices.

Sec. 21.115. **Business Necessity.** [73rd Leg., 1993]

An employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

(1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and

(2) is justified by business necessity.

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Sec. 21.120. **Use or Possession of Controlled Substance.** [74th Leg., 1995]

(a) An employer does not commit an unlawful employment practice by adopting a policy prohibiting the employment of an individual who currently uses or possesses a controlled substance as defined in Schedules I and II of Section 202, Controlled Substances Act, and their subsequent amendments (21 U.S.C. Section 801 et seq.), other than the use or possession a drug taken under the supervision of a licensed health care professional or any other use or possession authorized by the Controlled Substances Act or any other federal or state law.

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, or disability.

Sec. 21.121. **Work Force Diversity Programs.** [74th Leg., 1995]

An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs.

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Sec. 21.124. **Prohibition Against Discriminatory Use of Test Scores.** [74th Leg., 1995]

It is an unlawful employment practice for a respondent, in connection with the selection or referral or applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, or disability.

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Title 6. **RECORDS.**
Subtitle B. **COUNTY RECORDS.**
Chapter 194. **STORAGE OF COUNTY RECORDS BY MICROFILMING OR BY OPTICAL DATA STORAGE PROCESS.**

Sec. 194.0025. **Authorization of Optical Data Storage Process.** [71st Leg., 1989]

(a) For the purposes described by Section 194.002(a), a county clerk or clerk of the county court may adopt and use an optical data storage process for the storage of records by optical disk.

(b) This chapter applies, to the extent feasible, to the optical data storage process, the optical disk used in that process, and the records stored by that process in a manner equivalent to the manner in which this chapter applies to a microfilm process, the film used in that process, and the records stored by that process.

Sec. 194.0065. **Computerized Index for Official Public Records.** [71st Leg., 1989]

An index for an official public record may be stored or maintained by computer, provided that a security or backup copy of such index be created on a daily basis and stored in a climate-controlled location, equipped with fire alarms and sprinklers, which must be separate and apart from the building in which the computer is located.

Sec. 194.010. **Standards for Filming.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) If a state public records commission is created, an original negative roll and an original negative discrete image of a microfilm record must meet the requirements of that commission relating to archival quality, density, resolution, and definition. If that commission is not created, a microfilm record must meet such requirements of the American National Standards Institute.

(b) A camera used for microfilming must meet or exceed the then current requirements of the American National Standards Institute for the documentation of permanent records.

Sec. 194.017. **Disposal of Originals.** [70th Leg., 1987; Amended 73rd 1993]

The commissioners court of a county may authorize by order the disposal of an original paper record from which a microfilm or an optical image record is made if the county clerk certifies to the court that:

(1) the original negative microfilm of the record fully meets the requirements of the American National Standards Institute for archival quality, density, resolution, and definition; or

(2) the optical image of the record meets the standards approved by the Texas State Library and Archives Commission.

Subtitle C. **RECORDS PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT.**
Chapter 201. **GENERAL PROVISIONS.**

Sec. 201.001. **Short Title.** [Amended 71st Leg., 1989]

This subtitle may be cited as the Local Government Records Act.

Sec. 201.002. **Purpose.** [Amended 71st Leg., 1989]

Recognizing that the citizens of the state have a right to expect, and the state has an obligation to foster, efficient and cost-effective government and recognizing the central importance of local government records in the lives of all citizens, the legislature finds that:

(1) the efficient management of local government records is necessary to the effective and economic operation of local and state government;

(2) the preservation of local government records of permanent value is necessary to provide the people of the state with resources concerning their history and to document their rights of citizenship and property;

(3) convenient access to advice and assistance based on well-established and professionally recognized records management techniques and practices is necessary to promote the establishment of sound records management programs in local governments, and the state can provide the assistance impartially and uniformly; and

(4) the establishment of uniform standards and procedures for the maintenance, preservation, microfilming, or other disposition of local government records is necessary to fulfill these important public purposes.

Sec. 201.003. **Definitions.** [Amended 74th Leg., 1995]

In this subtitle:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Custodian" means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

(3) "Designee" means an employee of the commission designated by the director and librarian as provided by Section 441.167, Government Code.

(4) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

(5) "Essential record" means any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

(6) "Governing body" means the court, council, board, commission, or other body established or authorized by law to govern the operations of a local government. In those instances in which authority over an office or department of a local government is shared by two or more governing bodies or by a governing body and the state, the governing body, for the purposes of this subtitle only, is the governing body that provides most of the operational funding for the office or department.

(7) "Local government" means a county, including all district and precinct offices of a county, municipality, public school district, appraisal district, or any other special-purpose district or authority.

(8) "Local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

(A) extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;

(B) notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;

(C) blank forms;

(D) stocks of publications;

(E) library and museum materials acquired solely for the purposes of reference or display; or

(F) copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552, Government Code, or other state law.

(9) "Office" means any office, department, division, program, commission, bureau, board, committee, or similar entity of a local government.

(10) "Permanent record" or "record of permanent value" means any local government record for which the retention period on a records retention schedule issued by the commission is given as permanent.

(11) "Record" means a local government record.

(12) "Records control schedule" means a document prepared by or under the authority of the records management officer listing the records maintained by a local government or an elective county office, their retention periods, and other records disposition information that the records management program in each local government or elective county office may require.

(13) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

(14) "Records management officer" means the person identified under Section 203.001 or designated under Section 203.025 as the records management officer.

(15) "Records retention schedule" means a document issued by the Texas State Library and Archives Commission under authority of Subchapter J, Chapter 441, Government Code, establishing mandatory retention periods for local government records.

(16) "Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Sec. 201.004. **Record Books.** [Amended 71st Leg., 1989]

If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a "book," "record book," or "well-bound book," or contains any similar requirement that a record be maintained in bound paper form, the record whose creation is called for in the provision may be maintained on microfilm or stored electronically in accordance with the requirements of Chapters 204 and 205 and rules adopted under those chapters unless the law specifically prohibits those methods.

Sec. 201.005. **Declaration of Records as Public Property; Access.** [Amended 71st Leg., 1989]

(a) Local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of this subtitle and Subchapter J, Chapter 441, Government Code.

(b) A local government officer or employee does not have, by virtue of the officer's or employee's position, any personal or property right to a local government record even though the officer or employee developed or compiled it.

Sec. 201.006. **Records to be Delivered to Successor in Office.** [Amended 71st Leg., 1989]

(a) A custodian of local government records shall, at the expiration of the custodian's term of office, appointment, or employment, deliver to the custodian's successor, if there is one, all local government records in custody. If there is no successor, the governing body shall determine which officer of the local government shall have custody.

(b) If the functions of an office of one local government are assumed by another local government, the governing bodies of the two local governments shall determine in which local government custody of the records of the office shall be vested.

Sec. 201.007. **Records of Abolished Local Governments.** [Amended 71st Leg., 1989]

(a) If a local government is abolished or declared void pursuant to state law, the records of the local government shall be dealt with according to this section.

(b) After the settlement of the outstanding indebtedness of an abolished municipality and the satisfaction of the other applicable requirements of Chapter 62, Local Government Code, the municipality's governing body at the time the municipality is abolished, or the receiver or trustees if appointed by a court, shall transfer the records of the municipality to the custody of the commission. A record of an abolished municipality may not be sold to satisfy an outstanding indebtedness.

(c) After the settlement of the outstanding indebtedness of an abolished special-purpose district or authority, other than a school district, and the satisfaction of the other applicable requirements of state law establishing or permitting the establishment of the district or authority or governing its abolition, the district's governing body at the time the district is abolished shall transfer the records of the district to the custody of the commission. A record of an abolished special-purpose district or authority may not be sold to satisfy an outstanding indebtedness.

(d) As an exception to Subsections (b) and (c), if some or all of the functions of an abolished municipality or special-purpose district or authority, other than a school district, are assumed by another local government, the records of the abolished local government relating to the assumed functions shall be transferred to the appropriate offices of the local government assuming the functions.

(e) The records of annexed, consolidated, or abolished school districts shall be transferred as provided by this subsection. The records of an annexed school district shall be transferred to the custody of the governing body of the school district to which the abolished school district has been annexed. The records of each of two or more school districts that have been consolidated shall be transferred to the custody of the governing body of the consolidated school district. The records of an abolished school district whose entire territory is annexed to another school district shall be transferred to the custody of the governing body of that school district. The commissioner of education shall determine to which governing body custody of the records of an abolished school district shall be transferred in those instances in which the territory of the abolished district is divided among two or more school districts.

(f) The cost of transfer of records to the commission under this section shall be paid for out of funds of the commission.

(g) The retention and disposition of local government records transferred to the custody of the commission under this section shall be based, as far as is practicable, on records retention schedules issued by the commission.

Sec. 201.008. **Records of Abolished Offices of County Superintendents of Schools.** [Amended 71st Leg., 1989]

(a) Regardless of the provisions of Section 17.97, Education Code, all records of an office of county superintendent of schools or county superintendent of education abolished under Section 17.95, Education Code, before September 1, 1989, that are still in the possession of a custodian of county records or a county officer shall be transferred to the custody of the commission by order of the director and librarian.

(b) The director and librarian shall determine the time and manner of the transfer of the records on a county-by-county basis. The cost of the transfer shall be paid for out of funds of the commission.

(c) The county judge of a county in which a custodian of county records has possession of the records of an abolished office of the county superintendent of schools may petition the director and librarian to allow the county to retain all or part of the records and the director and librarian may grant the petition.

Sec. 201.009. **Access to Records.** [Amended 74th Leg., 1995]

(a) Local government records are subject to Chapter 552, Government Code.

(b) Any local government record to which public access is denied under Chapter 552, Government Code, is, if still in existence, open to public inspection 75 years after it was originally created or received. However, a birth record maintained by a local registrar is, if still in existence, open to public inspection 100 years after it was originally created or received and a death record maintained by a local registrar is, if still in existence, open to public inspection 55 years after it was originally created or received. This subsection does not limit the authority of a governing body or an elected county officer to establish retention periods for records under Section 203.042.

(c) Subsection (b) does not apply to a local government record whose public disclosure is prohibited by an order of a court or by another state law.

## Chapter 202. DESTRUCTION AND ALIENATION OF RECORDS.

Sec. 202.001. **Destruction of Records.** [71st Leg., 1989]

(a) A local government record may be destroyed if:

(1) the record is listed on a records control schedule accepted for filing by the director and librarian as provided by Section 203.041 and either its retention period has expired or it has been microfilmed or stored electronically in accordance with the requirements of Chapters 204 and 205;

(2) the record appears on a list of obsolete records approved by the director and librarian as provided by Section 203.044; or

(3) a destruction request is filed with and approved by the director and librarian as provided by Section 203.045 for a record not listed on an approved control schedule.

(b) The following records may be destroyed without meeting the conditions of Subsection (a):

(1) records the destruction or obliteration of which is directed by an expunction order issued by a district court pursuant to state law; and

(2) records defined as exempt from scheduling or filing requirements by rules adopted by the commission or listed as exempt in a records retention schedule issued by the commission.

Sec. 202.002. **Litigation and Open Records Requests.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) Regardless of any other provision of this subtitle or rules adopted under it, a local government record the subject matter of which is known by the custodian to be in litigation may not be destroyed until the litigation is settled.

(b) Regardless of any other provision of this subtitle or rules adopted under it, a local government record subject to a request under Chapter 552, Government Code, may not be destroyed until the request is resolved.

Sec. 202.003. **Method of Destruction.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes except as provided by Subsection (b).

(b) Records to which public access is restricted under Chapter 552, Government Code, or other state law may be destroyed only by burning, pulping, or shredding.

(c) A local government that sells or donates records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler.

(d) The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records.

Sec. 202.004. **Alienation of Records.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) A local government record may be sold or donated, loaned, transferred, or otherwise passed out of the custody of a local government to any public institution of higher education, public museum, pubic library, or other public entity with the approval of the local government's records management officer and after the expiration of the record's retention period under the local government's records control schedule.

(b) A local government record may not be sold or donated (except for the purposes of recycling), loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the director and librarian and after the expiration of its retention period under the local government's records control schedule.

(c) A records management officer or custodian may temporarily transfer a local government record to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures.

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Sec. 202.005. **Right of Recovery.** [71st Leg., 1989]

(a) The governing body may demand and receive from any person any local government record in private possession created or received by the local government the removal of which was not authorized by law.

(b) If the person in possession of a local government record refuses to deliver the record on demand, the governing body may petition the district court of the county in which the person resides for the return of the record. If the court finds that the record is a local government record, the court shall order the return of the record.

(c) As part of the petition to the district court or at any time after its filing, the governing body may petition to have the record seized pending the determination of the court if the governing body finds the record is in danger of being destroyed, mutilated, altered, secreted, or removed from the state.

(d) The director and librarian may demand and receive from any person any local government record of permanent value in private possession.

(e) If the person in possession of the local government record of permanent value refuses to deliver the record on demand, the director and librarian may ask the attorney general to petition for the recovery of the record as provided by this section. As part of the petition or at any time after its filing, the attorney general may petition to have the record seized pending the determination of the court if the governing body finds the record is in danger of being destroyed, mutilated, altered, secreted, or removed from the state.

(f) A local government record recovered as the result of a petition by the attorney general shall be transferred to the custody of the commission or, at the discretion of the director and librarian, be returned to the local government that originally had custody of the record.

(g) If a local government refuses to deliver custody of a record to the commission as provided by Section 201.007, 201.008, or 203.050, the director and librarian may ask the attorney general to petition for recovery of the record. If the court determines that the director and librarian has acted in

accordance with Section 201.007, 201.008, or 203.050, as applicable, and with regard to Section 203.050, the court finds that the survival of the record is imperiled, the court shall order the record to be transferred to the custody of the commission.

(h) If a governing body petitions a court for the recovery of a record under Subsection (b) and prevails or if the attorney general petitions a court for the recovery of a record under Subsection (e) or (g) and prevails, the court shall award attorney's fees and court costs to the prevailing party.

Sec. 202.006. **Destruction of Nonrecord Material.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) Material that is not included in the definition of a local government record and is described by Section 201.003(8)(A), (B), or (C) may be disposed of at the discretion of the custodian or the creator of the document, as applicable, subject to any policies developed in each local government or elective county office regarding the destruction.

(b) Extra identical copies of a local government record to which public access is restricted under Chapter 552, Government Code, or other state law may be destroyed only by burning, pulping, or shredding.

Sec. 202.007. **Personal Liability.** [71st Leg., 1989]

A custodian of local government records, records management officer, or other officer or employee of a local government may not be held personally liable for the destruction of a local government record if the destruction is in compliance with this subtitle and rules adopted under it.

Sec. 202.008. **Penalty: Destruction or Alienation of Record.** [71st Leg., 1989]

An officer or employee of a local government commits an offense if the officer or employee knowingly or intentionally violates this subtitle or rules adopted under it by destroying or alienating a local government record in contravention of this subtitle or by intentionally failing to deliver records to a successor in office as provided by Section 201.006(a). An offense under this section is a Class A misdemeanor.

Sec. 202.009. **Penalty: Possession of Record by Private Entity.** [71st Leg., 1989]

(a) A private college or university, a private museum or library, a private organization of any other type, or an individual commits an offense if the entity knowingly or intentionally acquires or possesses a local government record. An offense under this subsection is a Class A misdemeanor.

(b) It is a defense to prosecution under this section that a private college, university, museum, or library, by agreement with the commission under Subchapter J, Chapter 441, Government Code, provides physical housing for a local government record the title to which has been vested in the commission.

Chapter 203. **MANAGEMENT AND PRESERVATION OF RECORDS.**

Subchapter A. **Elective County Offices.**

Sec. 203.001. **Records Management Officer.** [71st Leg., 1989]

Each elected county officer is the records management officer for the records of the officer's office.

Sec. 203.002. **Duties and Responsibilities of Elected County Officers as Records Management Officers.** [71st Leg., 1989]

The elected county officer shall:

(1) develop policies and procedures for the administration of an active and continuing records management program;

(2) administer the records management program so as to reduce the costs and improve the efficiency of recordkeeping;

(3) prepare and file with the director and librarian the records control schedules and amended schedules required by Section 203.041 and the list of obsolete records as provided by Section 203.044;

(4) prepare requests for authorization to destroy records not on an approved control schedule as provided by Section 203.045, requests to destroy the originals of permanent records that have been microfilmed as provided by Section 204.008, and electronic storage authorization requests as provided by Section 205.007;

(5) identify and take adequate steps to preserve records that are of permanent value;

(6) identify and take adequate steps to protect the essential records of the office;

(7) ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the records management program and the requirements of this subtitle and rules adopted under it; and

(8) cooperate with the commission in its conduct of statewide records management surveys.

Sec. 203.003. **Duties of Commissioners Court.** [71st Leg., 1989; Amended 73rd Leg., 1993]

The commissioners court of each county shall:

(1) promote and support the efficient and economical management of records of all elective offices in the county to enable elected county officers to conform to this subtitle and rules adopted under it;

(2) facilitate the creation and maintenance of records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of each elective office and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and the persons affected by the activities of the local government;

(3) facilitate the identification and preservation of the records of elective offices that are of permanent value; and

(4) facilitate the identification and protection of the essential records of elective offices;

(5) establish a county clerk records management and preservation fund for fees subject to Section 118.0216 and approve in advance any expenditures from the fund; and

(6) establish a records management and preservation fund for the records management and preservation fees authorized under Sections 118.052, 118.0546, and 118.0645, Section 51.317, Government Code, and Article 102.005(d), Code of Criminal Procedure, and approve in advance any expenditures from the fund, which may be spent only for records management preservation or automation purposes in the county.

Sec. 203.004. **Director and Librarian.** [71st Leg., 1989]

The director and librarian shall provide advice and assistance to records management officers in establishing records management programs and in carrying out the other requirements of this subtitle and rules adopted under it.

Sec. 203.005. **Records Management Program to be Established.** [71st Leg., 1989]

(a) On or before January 1, 1991, each elected county officer shall adopt a written plan establishing an active and continuing program for the efficient and economical management of the records of the elective office of which the elected officer is custodian.

(b) The plan must provide policies, methods, and procedures to fulfill the duties and responsibilities set out in Section 203.002 concerning the management and preservation of records. The plan may establish additional policies or procedures for the operation of the records management program that are consistent with the requirements of this subtitle and rules adopted under it.

(c) A copy of the plan must be filed by the elected county officer with the director and librarian within 30 days after the date of its adoption.

(d) A plan establishing or relating to a records management program adopted before September 1, 1989, must be amended if any provision of the plan is in conflict with this subtitle or a rule adopted under it. A copy of the amended plan shall be filed with the director and librarian as provided by Subsection (c).

(e) A copy of an amended plan relating to the establishment or operation of the records management plan must be filed with the director and librarian within 30 days after the date of its adoption.

(f) The director and librarian or the designee of the director and librarian shall within a reasonable time bring to the attention of the elected county officer in writing any aspect of a plan filed in the office of the director and librarian or that otherwise comes to the attention of the director and librarian that is inconsistent with requirements of this subtitle or rules adopted under it.

(g) An elected county officer is authorized, instead of or in conjunction with submitting a plan and establishing an independent records program for the elective office, to participate in a county program established as provided by Subchapter B or in one or more specific components of a county program and to authorize the records management officer of the county program to act as the records management officer for the records of the elective office.

Subchapter B. **All Other Local Government Offices.**

Sec. 203.021. **Duties and Responsibilities of Governing Body.** [71st Leg., 1989]

The governing body of a local government, including a commissioners court with regard to nonelective county offices, shall:

(1) establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;

(2) cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;

(3) facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government;

(4) facilitate the identification and preservation of local government records that are of permanent value;

(5) facilitate the identification and protection of essential local government records; and

(6) cooperate with the commission in its conduct of statewide records management surveys.

Sec. 203.022. **Duties and Responsibilities of Custodians.** [71st Leg., 1989]

(a) Custodians of records in each local government shall:

(1) cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records and in carrying out the requirements of this subtitle;

(2) adequately document the transaction of government business and the services, programs, and duties for which the custodian and the custodian's staff are responsible; and

(3) maintain the records in the custodian's care and carry out their preservation, microfilming, destruction, or other disposition only in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it.

(b) State law relating to the duties, other responsibilities, or recordkeeping requirements of a custodian of local government records do not exempt the custodian or the records in the custodian's care from the application of this subtitle and rules adopted under it and may not be used by the custodian as a basis for refusal to participate in the records

management program of the local government whose establishment is required by this chapter.

Sec. 203.023. **Duties of Records Management Officer.** [71st Leg., 1989]

The records management officer in each local government shall:

(1) assist in establishing and developing policies and procedures for a records management program for the local government;

(2) administer the records management program and provide assistance to custodians for the purposes of reducing the costs and improving the efficiency of recordkeeping;

(3) in cooperation with the custodians of the records:

(A) prepare and file with the director and librarian the records control schedules and amended schedules required by Section 203.041 and the list of obsolete records as provided by Section 203.044; and

(B) prepare or direct the preparation of requests for authorization to destroy records not on an approved control schedule as provided by Section 203.045, of requests to destroy the originals of permanent records that have been microfilmed as provided by Section 204.008, and of electronic storage authorization requests as provided by Section 205.007;

(4) in cooperation with custodians, identify and take adequate steps to preserve local government records that are of permanent value;

(5) in cooperation with custodians, identify and take adequate steps to protect essential local government records;

(6) in cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it;

(7) disseminate to the governing body and custodians information concerning state laws, administrative rules, and the policies of the government relating to local government records; and

(8) in cooperation with custodians, establish procedures to ensure that the handling of records in any context of the records management program by the records management officer or those under the officer's authority is carried out with due regard for:

(A) the duties and responsibilities of custodians that may be imposed by law; and

(B) the confidentiality of information in records to which access is restricted by law.

Sec. 203.024. **Director and Librarian.** [71st Leg., 1989]

The director and librarian shall provide advice and assistance to governing bodies, custodians, and records management officers in establishing records management programs and in carrying out the other requirements of this subtitle and rules adopted under it.

Sec. 203.025. **Designation of Records Management Officer.** [71st Leg., 1989]

(a) On or before June 1, 1990, the governing body of each local government shall designate a records management officer by:

(1) designating an individual; or

(2) designating an office or position, the holder of which shall be the records management officer.

(b) The name, office, or position of the records management officer shall be entered on the minutes of the governing body.

(c) The name or the name and office or position of the records management officer shall be filed by the records management officer with the director and librarian within 30 days after the date of the designation.

(d) The designation of a new individual or a new office or position shall be entered on the minutes and reported by the records management officer to the director and librarian in the same manner as the original designation.

(e) If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with the director and librarian within 30 days after the date of assuming the office or position.

(f) Through an agreement or contract under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), a person may serve as records management officer to more than one local government if the person is employed by one of the local governments that is party to the contract or agreement or employed by an administrative agency that is created by the contract or agreement.

(g) An elected county officer may not be designated as records management officer for the nonelective offices of a county without the county officer's consent.

Sec. 203.026. **Records Management Program to be Established.** [71st Leg., 1989]

(a) On or before January 1, 1991, each governing body by ordinance or order, as appropriate, shall establish a records management program to be administered by the records management officer.

(b) The ordinance or order must provide methods and procedures to enable the governing body, custodians, and the records management officer to fulfill the duties and responsibilities set out in Sections 203.021, 203.022, and 203.023 concerning the management and preservation of records. The ordinance or order may prescribe any policies or procedures for the operation of the records management program that are consistent with the requirements of this subtitle and rules adopted under it.

(c) A copy of the ordinance or order must be filed by the records management officer with the director and librarian within 30 days after the date of its adoption.

(d) An ordinance or order establishing or relating to a records management program adopted before September 1, 1989, must be amended if any provision of the ordinance or

order is in conflict with this subtitle or a rule adopted under it. A copy of the amended ordinance or order shall be filed with the director and librarian as provided by Subsection (c).

(e) A copy of an amended ordinance or revised order relating to the establishment or operation of the records management program must be filed by the governing body with the director and librarian within 30 days after the date of its adoption.

(f) The director and librarian or the designee of the director and librarian shall within a reasonable time bring to the attention of the governing body in writing any aspect of an ordinance or order filed in the office of the director and librarian or that otherwise comes to the attention of the director and librarian that is inconsistent with the requirements of this subtitle or rules adopted under it.

(g) The governing body in a records management program established under this section may require the mandatory destruction of any record of the local government when its retention period has expired on a records control schedule developed under Section 203.041.

Subchapter C. **Records Control Schedules.**

Sec. 203.041. **Preparation and Filing of Records Control Schedules.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) On or before January 4, 1999, the records management officer shall prepare and file with the director and librarian:

(1) a records control schedule listing the following records and establishing a retention period for each as provided by Section 203.042:

(A) all records created or received by the local government or elective county office;

(B) any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has not expired; and

(C) any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has expired but which will not be destroyed as provided by Section 203.044; or

(2) the records management officer, in lieu of filing a records control schedule, may file with the director and librarian a written certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by the commission.

(b) At the discretion of the records management officer the records control schedule may also list and provide retention periods for material that is excluded from the definition of a local government record by Section 201.003(8) and exempted records described by Section 202.001(b) if in the officer's opinion the inclusion of the material or records is necessary to ensure the periodic destruction of the material or records in the interest of efficient records management.

(c) A records management officer, in lieu of filing and amended records control schedule, may file with the director and librarian an amended written certification of compliance that the local government or the elective county office has adopted amended records control schedules to comply with the minimum requirements established on records retention schedules issued by the commission including any revised schedules issued by the commission.

(d) The records management officer shall review the records control schedules of the local government or elective county office and prepare amendments to the schedules as needed to reflect new records created or received by the government or office or revision to retention periods established in a records retention schedule issued by the commission. Amendments to records control schedules shall be filed with the director and librarian in the same manner as the original schedules.

(e) The governing body shall require in the ordinance or order establishing the records management program the review or approval of a records control schedule or amended schedule by the officers of the local government as it considers necessary. The records control schedule or amended schedule for an elective county office need only be approved by the elected official in charge of that office.

(f) Records control schedules may be filed on an office-by-office basis or on a department-by-department basis within each office.

(g) A local government that intends to retain all records permanently or that destroys only those records for which no retention periods have been established in a records retention schedule established under Section 441.158, Government Code, is not required to submit a records control schedule under this section.

(h) The director and librarian shall determine the form and manner of the filing of records control schedules and amended schedules, the written certification of compliance described by Subsection (a)(2), and the amended written certification of compliance described by Subsection (c). The director and librarian may request that the records management officer file with the written certification of compliance or the amended written certification of compliance any amendment that establishes a records series or retention requirement other than that issued on a commission records retention schedule.

Sec. 203.042. **Retention Periods.** [71st Leg., 1989]

(a) A retention period for each record on the records control schedule shall be determined by the governing body or under its direction or by the elected county officer, as applicable.

(b) A retention period may not be less than:

(1) a retention period prescribed by a state or federal law, regulation, or rule of court; or

(2) a retention period for the record established on a records retention schedule issued by the commission.

(c) If at the time a records control schedule is filed by a local government or elected county officer with the director and librarian as provided by Section 203.041, a records retention schedule for the records of that type of local government or elective county office has not been issued by the commission, the records control schedule filed with the director and librarian must be amended to conform with the commission schedule when it is issued to the extent that any retention period on a records control schedule is less than a retention period for the same record on the commission schedule.

Sec. 203.043. **Filing of Records Control Schedules.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) If the director and librarian or the designee of the director and librarian accepts the records control schedule, amended schedule, written certification of compliance described by Section 203.041(a)(2), or amended written certification of compliance described by Section 203.041 (c) for filing, the acceptable records control schedule may be used as the basis for the destruction of records listed on it without additional notice to the director and librarian.

(b) If the director and librarian or the designee of the director and librarian rejects the records control schedule, amended schedule, written certification of compliance described by Section 203.041(a)(2), or amended written certification of compliance described by Section 203.041(c) for filing, the reasons for the rejection shall be stated in writing within a reasonable time to the records management officer and the schedule, amended schedule, written certification of compliance, or amended written certification of compliance shall be corrected and resubmitted.

(c) The director and librarian or the designee of the director and librarian may reject a records control schedule or amended schedule for filing only if a retention period listed on it is less than a retention period for the same record established on a records retention schedule issued by the commission or if the schedule is in violation of this subtitle or a rule adopted under it. The director and librarian or designees of the director and librarian may reject a written certification of compliance described by Section 203.041(a)(2) or an amended written certification of compliance described by Section 203.041(c) for filing only if the records management officer files a written certification of compliance in a form and manner that has not been approved by the director and librarian.

(d) The director and librarian or the designee of the director and librarian may make it a condition of acceptance of a records control schedule or amended schedule for filing that a record listed on the schedule be transferred to the custody of the commission on the expiration of its retention period rather than being destroyed.

Sec. 203.044. **Initial Destruction of Obsolete Records.** [71st Leg., 1989]

(a) In preparing a records control schedule required by Section 203.041, the records management officer may list separately those obsolete records no longer created or received by the local government or elective county office whose retention periods on a records retention schedule issued by the commission have expired and that the local government or elected county officer wishes to destroy.

(b) The lists of obsolete records to be destroyed must be reviewed or approved in the same manner as records control schedules must be reviewed or approved under Section 203.041(e).

(c) The lists shall be submitted to the director and librarian for approval. If the director and librarian or the designee of the director and librarian approves the list, the records listed on it may be destroyed. If the director and librarian or the designee of the director and librarian disapproves the list, the director and librarian or the designee shall state in writing within a reasonable time to the records management officer the record or records on the list that must be retained by the government or elective county office or transferred to the custody of the commission.

(d) The director and librarian shall determine the form and manner of submission of requests to destroy obsolete records.

Sec. 203.045. **Destruction of Unscheduled Records.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) Before the filing of a records control schedule or a written certification of compliance as provided by Section 203.041, a local government record may be destroyed only with the prior approval of the director and librarian.

(b) After the filing of a records control schedule, amended schedule, written certification of compliance as provided by Section 203.041(a)(2), or amended written certification of compliance as provided by Section 203.041(c), a record that does not appear on a records control schedule or amended schedule may be destroyed only with the prior approval of the director and librarian.

(c) Requests for authorization to destroy unscheduled records shall be submitted by the records management officer or under the officer's direction. However, if the request is submitted before the filing of a records control schedule or a written certification of compliance as provided by Section 203.041 and a records management officer has not yet been designated as provided by Section 203.025, the request shall be submitted by the custodian.

(d) If the director and librarian or the designee of the director and librarian approves the request, the records listed on it may be destroyed. If the director and librarian or the designee disapproves the request, the director and librarian or the designee shall state in writing within a reasonable time to the records management officer or custodian the record or records on the list that must be retained by the government or transferred to the custody of the commission.

(e) The director and librarian shall determine the form and manner of submission of requests to destroy unscheduled records.

Sec. 203.046. **Recordkeeping Requirements.** [71st Leg., 1989]

As the governing body may require, the records management officer shall keep accurate lists of records destroyed, their volume, and other information of records management activities.

Sec. 203.047. **New Local Governments.** [71st Leg., 1989]

A local government established after September 1, 1989, shall fulfill the requirements of Sections 203.025, 203.026, and 203.041 within one year after the date of its establishment.

Sec. 203.048. **Care of Records of Permanent Value.** [71st Leg., 1989]

The commission shall adopt rules establishing standards for the proper care and storage of local government records of permanent value. The commission may require that certain local government records of permanent value be created on permanent-durable paper, the standards for which shall be established by rule. The rules must be approved as required by Section 441.165, Government Code.

Sec. 203.049. **Transfer of Records of Permanent Value.** [71st Leg., 1989]

(a) The governing body or elected county officer may offer to transfer records of permanent value not needed in the day-to-day business of the local government to the custody of:

(1) the commission; or

(2) another local government that operates an archives, library, or museum that meets standards for the care and storage of permanent records established by the commission as provided by Section 203.048.

(b) Transfers of permanent records to another local government require the prior approval of the director and librarian.

(c) In a transfer of permanent records under this section, title and control of the records and all rights pertaining to the records granted by law to the original custodian or elected county officer are vested in the commission or the local government that receives the records.

Sec. 203.050. **Inspection of Permanent Records.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The director and librarian or the authorized representative of the director and librarian is entitled to inspect in the offices of any local government or elected county officer the condition of any permanent record to which access by the director and librarian or the representative is not restricted by law. The inspection is not a release of a record to a member of the public under Chapter 552, Government Code.

(b) The director and librarian, in writing, shall bring to the attention of the governing body or elected county officer, any aspect of the storage, handling, or use of the record that imperils its survival and state what measures must be taken to properly care for and preserve the record.

(c) If, after having been notified by the director and librarian as provided by Subsection (b), the governing body or the elected county officer fails to take required measures to preserve the record, the director and librarian may:

(1) if the record is an obsolete record whose creation is no longer required by law, demand and receive delivery of the record to the custody of the commission; or

(2) if the record is required for current use by the local government, make copies of the record for the purpose of preservation by the commission.

(d) The cost of transferring or copying records under this section shall be paid for out of funds of the commission.

## Chapter 204. Microfilming of Records.

Sec. 204.001. **Definitions.** [71st Leg., 1989]

In this chapter:

(1) "Microfilm" means roll microfilm, microfiche, and all other formats produced by any method of microphotography or other means of miniaturization on film.

(2) "Microfilming" means the methods, procedures, and processes used to produce roll microfilm, microfiche, or other microphotographic formats.

Sec. 204.002. **Authorization.** [71st Leg., 1989]

Any local government record may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of this chapter and rules adopted under it.

Sec. 204.003. **Microfilm Produced Under Prior Law.** [71st Leg., 1989]

(a) All microfilm produced before June 1, 1990, under prior law is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law.

(b) In rules adopted under Section 204.004, the commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by prior law.

Sec. 204.004. **Standards and Procedures.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The commission shall adopt rules on or before April 1, 1990, establishing standards and procedures for the microfilming of local government records. The rules must be approved as required by Section 441.165, Government Code.

(b) The rules must prescribe:

(1) standards for film quality, resolution, density, definition, and chemical stability;

(2) tests and other methods of inspection required to establish that prescribed standards have been met;

(3) procedures for verifying that records have been filmed accurately;

(4) procedures for the certification of microfilmed records;

(5) standards for the use of editorial and technical targets on microfilm;

(6) standards for the production of use copies from and the storage of master microfilm negatives;

(7) procedures for the labeling and indexing of microfilmed records;

(8) procedures establishing the manner in which court case papers must be filmed;

(9) procedures for the expunction of criminal records on microfilm pursuant to court order;

(10) standards for computer-output microfilm; and

(11) standards for providing access by the members of the public to records on microfilm to which they are entitled under law.

(c) In rules adopted under this section, the commission may establish differing standards and procedures for the microfilming of:

(1) any permanent record;

(2) any record of a municipal, justice, county, or district court; or

(3) any record to which access is restricted under Chapter 552, Government Code, or other state law.

Sec. 204.005. **Rules to be Updated.** [71st Leg., 1989]

The director and librarian shall monitor standards relating to microfilming developed for use by federal agencies or adopted by national organizations that develop and set standards in the fields of information and records management in order to recommend to the commission any needed amendments to rules.

Sec. 204.006. **Indexing.** [71st Leg., 1989]

An index to a microfilm record must show the same information that may be required by state law for an index to the same record if it is not microfilmed.

Sec. 204.007. **Destruction of Original Records.** [71st Leg., 1989]

(a) Except as provided by Section 204.008, the original of a record that has been microfilmed pursuant to this chapter and rules adopted under it may be destroyed before the expiration of its retention period on a records retention schedule issued by the commission.

(b) A list of the originals of microfilmed records destroyed shall be filed with the records management officer.

(c) The microfilm record must be retained until the expiration of the retention period for the original record.

Sec. 204.008. **Destruction of Permanent Records.** [71st Leg., 1989]

(a) The original of a permanent record may not be destroyed until a destruction authorization request is submitted to the director and librarian certifying that the microfilm of the record meets the standards of this chapter and rules adopted under it.

(b) Requests shall be submitted by the records management officer or under the officer's direction or, if a records management officer has not yet been designated under Section 203.025, by the custodian of the microfilm records.

(c) If the director and librarian or the designee of the director and librarian approves the request, the original record may be destroyed.

(d) In lieu of destruction, the director and librarian may require that the original record be transferred to the custody of the commission.

(e) If the director and librarian or the designee of the director and librarian disapproves the request, the reasons for the disapproval shall be stated in writing within a reasonable time to the records management officer or custodian. The original records may not be destroyed until the microfilm of the records is brought into compliance with this chapter and the rules adopted under it as evidenced by the submission of a new destruction authorization request.

(f) The director and librarian shall determine the form and manner of submission of destruction authorization requests required by this section.

Sec. 204.009. **Microfilm of Permanent Records to be Supplied.** [71st Leg., 1989]

(a) A local government or elected county officer, at the request of the director and librarian, shall supply to the commission a copy of the microfilm of any permanent record to which access is not restricted by law.

(b) The commission shall reimburse the local government or elected county officer for the cost of the copy. If the film duplication is performed by the local government or elected county officer, the cost must be the same as that paid by state agencies to the Texas State Library for a similar microfilm copy. If the film duplication is done by a commercial microfilming service under contract with the local government or elected county officer, the cost of the copy may not exceed the cost paid by the local government or elected county officer for a copy under the contract.

(c) The director and librarian or an employee of the commission may not provide certified copies of a record on microfilm obtained under this section without the consent of the original local custodian of the record.

Sec. 204.010. **Commercial Microfilm Storage Facilities.** [71st Leg., 1989]

(a) The commission may establish a program for the certification of commercial microfilm storage facilities for the storage of the master microfilm negatives of local government records.

(b) If the commission establishes a certification program, the procedures of this subsection apply. On request by the commercial storage facility, the director and librarian, or the representative of the director and librarian, shall inspect the facility to determine if the facility meets the minimum standards established by the commission under Section 204.004 for the storage of the microfilm of local government records. If the commercial storage facility meets the minimum standards established by the commission, the name of the facility shall be added to a list of certified storage facilities to be prepared by the director and librarian and made available on request to a local government, elected county officer, or other interested party. The inspection and certification of commercial storage facilities shall be on a fee basis to be determined by the commission.

(c) The commission shall determine the period a certification made under this section is effective.

Sec. 204.011. **Effective as Original Record.** [71st Leg., 1989]

(a) A microfilmed record created in compliance with this chapter and rules adopted under it, including microfilm validated by Section 204.003, is an original record and shall be accepted by any court or administrative agency of this state.

(b) If issued and certified by a local government recordkeeper, a copy on paper or film of a microfilmed record shall be accepted by a court or administrative agency of this state as a certified copy of an original record.

## Chapter 205. ELECTRONIC STORAGE OF RECORDS.

Sec. 205.001. **Definitions.** [71st Leg., 1989]

In this chapter:

(1) "Electronic storage" means the maintenance of local government record data in the form of digital electronic signals on a computer hard disk, magnetic tape, optical disk, or similar machine-readable medium.

(2) "Local government record data" means the information that by law, regulation, rule of court, ordinance, or administrative procedure in a local government comprises a local government record as defined by Section 201.003.

(3) "Source document" means the local government record from which local government record data is obtained for electronic storage. The term does not include backup copies of the data in any media generated from electronic storage.

Sec. 205.002. **Authorization.** [71st Leg., 1989]

Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of this chapter and rules adopted under it.

Sec. 205.003. **Standards and Procedures to be Adopted.** [71st Leg., 1989]

(a) The commission shall adopt rules establishing standards and procedures for the electronic storage of any local government record data of permanent value and may adopt rules establishing standards and procedures for the electronic storage of any local government record data whose retention period is at least 10 years on a records retention schedule issued by the commission. The rules must be approved as required by Section 441.165, Government Code.

(b) With regard to the types of local government record data covered by Subsection (a), the rules may require or prescribe:

(1) standards and procedures for the generation of backup or preservation copies of the local government record data on paper, microfilm, electronic, or other approved media;

(2) standards and procedures for the recopying or duplication of the magnetic tape, optical disk, or similar machine-readable medium on which the local government record data are stored;

(3) standards and procedures for the physical storage and maintenance of magnetic tapes, optical disks, or similar machine-readable media;

(4) standards and procedures for providing access by members of the public to electronically stored local government record data to which they are entitled under law; and

(5) other standards and procedures that the commission considers necessary to ensure the availability, readability, or integrity of the local government record data.

Sec. 205.004. **Rules to be Updated.** [71st Leg., 1989]

The director and librarian shall monitor standards and procedures relating to electronic storage developed for use by federal agencies or adopted by national organizations that develop and set standards in the fields of records and information management in order to recommend to the commission any needed amendments to rules.

Sec. 205.005. **Supreme Court Rules.** [71st Leg., 1989]

This chapter is not intended to conflict with Subchapter I, Chapter 51, Government Code, relating to the electronic filing of certain documents in district and county courts. The commission shall incorporate any rules adopted under that subchapter into its own.

Sec. 205.006. **Index.** [71st Leg., 1989]

An index to local government record data stored electronically must provide the same information that may be required by state law for an index to the source document, if applicable.

Sec. 205.007. **Electronic Storage Authorization Requests.** [71st Leg., 1989]

(a) Before the electronic storage of any local government record data of permanent value or, if stipulated in commission rules, any local government record data whose

retention period is at least 10 years on a records retention schedule issued by the commission, an electronic storage authorization request shall be submitted to the director and librarian for approval.

(b) Electronic storage authorization requests shall be submitted by the records management officer or under the officer's direction or, if a records management officer has not yet been designated under Section 203.025, by the custodian of the local government record data to be stored electronically.

(c) If the director and librarian or the designee of the director and librarian approves the request, the local government record data may be stored electronically.

(d) If the director and librarian or the designee of the director and librarian disapproves the request, the reasons for the disapproval shall be stated in writing within a reasonable time to the records management officer or custodian. Electronic storage of the local government record data may not take place until an electronic storage authorization request receives the approval of the director and librarian or the designee of the director and librarian.

(e) The director and librarian or the designee of the director and librarian may disapprove an electronic storage authorization request only if the standards and procedures proposed for the electronic storage of the local government record data are in violation of this chapter or rules adopted under it.

(f) The director and librarian shall determine the form and manner of submission of authorization requests required by this chapter.

Sec. 205.008. **Destruction of Source Documents.** [71st Leg., 1989]

(a) The source document, if any, for electronically stored local government record data covered by Section 205.007(a) may be destroyed or returned to the person who filed it for record if the electronic storage authorization request is approved.

(b) The magnetic tape, optical disk, or similar medium containing the local government record data and the hardware and software necessary to provide access to it must be retained by the local government or be available to the local government until the expiration of the retention period for all source documents, subject to the rules adopted under this chapter.

(c) The source document, if any, for electronically stored local government record data not covered by Section 205.007(a) may be destroyed before the expiration of the retention period for the source document in a records retention schedule issued by the commission if the magnetic tape, optical disk, or similar medium and hardware and software necessary to provide access to local government record data on the media are retained for the retention period in the schedule. Conversely, the magnetic tape, optical disk, or similar medium may be erased, written over, or destroyed before the expiration of the retention period for a source document for local government record data not covered by Section 205.007(a), if the source document, if any, is retained until the expiration of its retention period or, if the source document has already been destroyed, paper or microfilm copies are generated from the magnetic tape, optical disk, or similar medium before destruction or erasure and retained until the expiration of the retention period for the source document.

Sec. 205.009. **Denial of Access Prohibited.** [71st Leg., 1989]

A person under contract or agreement with a local government or elected county officer to create, file, or store local government record data electronically or to provide services, equipment, or the means for the creation, filing, or storage, may not, under any circumstances, refuse to provide local government record data to the local government in a timely manner in a format accessible and usable by the local government.

Title 8. **ACQUISITION, SALE, OR LEASE OF PROPERTY.**

Subtitle A. **MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY.**

Chapter 251. **MUNICIPAL RIGHT OF EMINENT DOMAIN.**

Sec. 251.001. **Right of Eminent Domain.** [70th Leg., 1987]

(a) When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a public purpose to acquire public or private property, whether located inside or outside the municipality, for any of the following purposes:

(1) the providing, enlarging, or improving of a ...library....

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(b) A municipality condemning land under this section may take a fee simple title to the property if the governing body expresses the intention to do so.

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Chapter 252. **PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES.**

Subchapter A. **General Provisions.**

Sec. 252.001. **Definitions.** [70th Leg., 1987; Amended 74th Leg., 1995]

In this chapter:

(1) "Bond funds" includes money in the treasury received from the sale of bonds and includes the proceeds of bonds that have been voted but have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" includes money in the treasury, taxes in the process of being collected in the current tax year, and all other revenue that may be anticipated with reasonable certainty in the current tax year.

(4) "High technology procurement" means the procurement of equipment, goods, or services of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Planning services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

(6) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(7) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Time warrant" includes any warrant issued by a municipality that is not payable from current funds.

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Subchapter B. **Competitive Bidding or Competitive Proposals Required.**

Sec. 252.021. **Competitive Bidding and Competitive Proposal Requirements.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) Before a municipality may enter into a contract that requires an expenditure of more than $15,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding or competitive sealed proposals.

(b) Before a municipality with a population of less than 100,000 may enter into a contract for insurance that requires an expenditure of more than $5,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding.

(c) A municipality may use the competitive sealed proposal procedure only for high technology procurements or, in a municipality with a population in excess of 100,000, the purchase of insurance.

Sec. 252.0215. **Competitive Bidding in Relation to Historically Underutilized Business.** [73rd Leg., 1993]

A municipality, in making an expenditure of more than $3,000 but less than $15,000, shall contact at least two disadvantaged businesses on a rotating basis, based on information provided by the Office of Small Business Assistance of the Texas Department of Commerce pursuant to Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). If the list fails to identify a disadvantaged business in the county in which the city is situated, the city is exempt from this section.

Sec. 252.022. **General Exemptions.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) This chapter does not apply to an expenditure for:

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(4) a procurement for personal, professional, or planning services;

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(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

****

(D) capitve replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(8) a purchase of rare books, papers, and other library materials for a public library;

****

Subchapter C. **Procedures.**

Sec. 252.042. **Requests for Proposals for Certain Procurements.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) Requests for proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

Sec. 252.043. **Award of Contract.** [70th Leg., 1987]

(a) If the competitive sealed bidding requirement applies to the contract, the contract must be awarded to the lowest responsible bidder. The governing body may reject any and all bids.

(b) If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the

responsible offeror whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.
****

Sec. 252.049. **Confidentiality of Information in Bids or Proposals.** [70th Leg., 1987]

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.
****

Subchapter D. **Enforcement.**

Sec. 252.062. **Criminal Penalty.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.

(b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Sec. 252.063. **Removal; Ineligibility.** [71st Leg., 1989]

(a) The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the municipality with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that municipality.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Subtitle B. **COUNTY ACQUISITION, SALE OR LEASE OF PROPERTY.**

Chapter 261. **COUNTY RIGHT OF EMINENT DOMAIN.**

Sec. 261.001. **Right of Eminent Domain.** [70th Leg., 1987]

(a) A county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a...library....
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Chapter 262. **PURCHASING AND CONTRACTING AUTHORITY OF COUNTIES.**

Subchapter C. **Competitive Bidding in General.**

Sec. 262.021. **Short Title.** [70th Leg., 1987]

This subchapter may be cited as the County Purchasing Act.

Sec. 262.022. **Definitions.** [70th Leg., 1987; Amended 71st Leg., 1989]

In this subchapter:

(1) "Bond funds" means money in the county treasury received from the sale of bonds, and proceeds of bonds that have been voted but that have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" means funds in the county treasury that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the county treasury during the current tax year, and emergency funds.

(4) "High technology item" means a service, equipment, or good of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications, radio, and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Item" means any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items.

(6) "Purchase" means any kind of acquisition, including a lease, of an item.

(7) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(9) "Time warrant" means any warrant issued by a county that is not payable out of current funds.

Sec. 262.023. **Competitive Bidding and Competitive Proposal Requirements.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding $15,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter. All bids or proposals must be sealed.

(b) The competitive bidding and competitive proposal requirements established by Subsection (a) apply only to contracts for which payment will be made from current funds or bond funds or through time warrants. However, contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271).

(c) In applying the competitive bidding and competitive proposal requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the competitive bidding and competitive proposal requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the competitive bidding requirements of this subchapter is not present.

Sec. 262.024. **Exemptions.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

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(4) a personal or professional service;

****

(7) an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

****

(D) captive replacement parts or components for equipment;

****

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

****

Sec. 262.0241. **Competitive Bidding Procedures Adopted by County Purchasing Agents.** [72nd Leg., 1991]

A county purchasing agent shall adopt procedures that provide for competitive bidding, to the extent practicable under the circumstances, for the county purchase of an item under a contract that is not subject to competitive bidding under Section 262.023.

****

Sec. 262.027. **Awarding of Contract.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) The officer in charge of opening the bids shall present them to the commissioners court in session. Except as provided by Subsection (e), the court shall:

(1) award the contract to the responsible bidder who submits the lowest and best bid; or

(2) reject all bids and publish a new notice.

(b) If two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.

(c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility.

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Sec. 262.030. **Alternative Competitive Proposal Procedure for Insurance, High Technology Items, or Special Services.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) Except for Subsection (d) of this section, the competitive proposal procedure provided by this section may be used for the purchase of insurance, high technology items, and the following special services:

****

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(c) If provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.
••••

*[Note: At the time of printing this publication the statute contains two subsection (d)'s, one of which is used here.]*

(d) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Sec. 262.0305. **Modification After Award.** [71st Leg., 1989]

(a) After award of a contract but before the contract is made, the county official who makes purchases for the county may negotiate a modification of the contract if the modification is in the best interests of the county and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid.

(b) For the modified contract to be effective, the commissioners court must approve the contract.
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Sec. 262.034. **Criminal Penalties.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 262.023. An offense under this subsection is a Class B misdemeanor.

(b) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 262.023, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Sec. 262.035. **Removal; Ineligibility.** [71st Leg., 1989]

(a) The final conviction of a county officer or employee for an offense under Section 262.034(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the county with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that county.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Chapter 263. **SALE OR LEASE OF PROPERTY BY COUNTIES.**

Subchapter D. **Disposition of Salvage or Surplus Property.**

Sec. 263.151. **Definitions.** [70th Leg., 1987; Amended 71st Leg., 1989]

In this subchapter:

(1) "Salvage property" means personal property, other than items routinely discarded as waste, that because of use, time, accident or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that:

(A) is not salvage property or items routinely discarded as waste;

(B) is not currently needed by its owner;

(C) is not required for the owner's foreseeable needs; and

(D) possesses some usefulness for the purpose for which it was intended.

Sec. 263.152. **Disposition.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) The commissioners court of a county may:

(1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county;

(2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county; or

(3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made.
••••

(c) The commissioners court may dispose of property under Subsection (a)(3) by donating the property to a civic or charitable organization located in the county.

Sec. 263.155. **Record.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) The commissioners court shall keep a record of each item of surplus or salvage property sold and the sale price of each item.

(b) The commissioners court shall keep, for one year, a record of each item of surplus or salvage property destroyed or otherwise disposed of.

Sec. 263.156. **Proceeds.** [70th Leg., 1987]

Unless otherwise provided by law, the commissioners court shall deposit the proceeds from the sale of surplus or salvage property:

(1) in the county treasury to the credit of the general fund or the fund from which the property was purchased; or

****

Subtitle C. **ACQUISITION, SALE, OR LEASE PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT.**

Chapter 271. **PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS.**

Subchapter A. **Public Property Finance Act.**

Sec. 271.001. **Short Title.** [70th Leg., 1987]

This subchapter may be cited as the Public Property Finance Act.

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Sec. 271.005. **Authority to Contract for Personal Property.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) The governing body of a governmental agency may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the financing thereof. The contract is an obligation of the governmental agency. The contract may:

(1) be on the terms considered appropriate by the governing body;

(2) be in the form of a lease, a lease with an option or options to purchase, an installment purchase, or any other form considered appropriate by the governing body including that of an instrument which would be required to be approved by the attorney general pursuant to Chapter 53, Acts of the 70th Legislature, 2nd Called Session, 1987 (Article 717k-8, Vernon's Texas Civil Statutes) provided that contracts in such form must be approved by the attorney general in accordance with the terms of that article;

(3) be for a term approved by the governing body and contain an option or options to renew or extend the term; and

(4) be made payable from a pledge of all or any part of any revenues, funds, or taxes available to the governmental agency for its public purposes.

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(d) Subject only to applicable constitutional restrictions, the governing body may obligate taxes or revenues for the full term of a contract for the payment of the contract.

Sec. 271.006. **Compliance with Other Requirements.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) In entering into the contract, a municipality must comply with the requirements of Chapter 252 and a county must comply with the requirements of Subchapter C, Chapter 262. However, the municipality or county is not required to submit to a referendum the question of entering into the contract.

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Sec. 271.009. **Term of Contract.** [70th Leg., 1987]

The contract may be for any term not to exceed 25 years.

Subchapter C. **Certificate Of Obligation Act.**

Sec. 271.041. **Short Title.** [70th Leg., 1987]

This subchapter may be cited as the Certificate of Obligation Act of 1971.

Sec. 271.042. **Purpose; Conflict.** [70th Leg., 1987]

(a) It is the purpose of this subchapter to provide:

(1) a procedure for certain financing that is an alternative to the more cumbersome procedure under Chapter 252 of this code and the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes); and

(2) a new class of securities to be issued and delivered within the financial capabilities of an issuer on compliance with the procedures prescribed by this subchapter.

(b) If there is a conflict between a provision of this subchapter and a provision of either Chapter 252 of this code or the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), an issuer may use either provision, and it is not necessary for the governing body to designate the law under which action is being taken.

****

Sec. 271.044. **Subchapter Available to Certain Municipalities.** [70th Leg., 1987]

(a) A municipality may use this subchapter only if the municipality:

(1) is incorporated under the home-rule amendment to the constitution (Article XI, Section 5, of the Texas Constitution); or

(2) is incorporated under a general or special law and the municipality has the authority to levy an ad valorem tax of not less than $1.50 on each $100 valuation of taxable property in the municipality.

(b) A home-rule municipality may use this subchapter regardless of any provision in the municipality's charter to the contrary.

Sec. 271.045. **Purposes for Which Certificates May Be Authorized.** [70th Leg., 1987]

(a) The governing body of an issuer may authorize certificates to pay a contractual obligation to be incurred for the:

(1) construction of any public work;

(2) purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; or

(3) payment of contractual obligations for professional services, including services provided by tax appraisal engineers, engineers, architects, attorneys, map makers, auditors, financial advisors, and fiscal agents.

(b) If necessary because of change orders, certificates may be authorized in an amount not to exceed 25 percent of a contractual obligation incurred for the construction of public works, but certificates may be delivered only in the amount necessary to discharge contractual obligations.

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Sec. 271.046. **Additional Purposes for Certificates.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) Certificates may be issued for the payment of contractual obligations to be incurred in:

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(2) constructing, renovating, or otherwise improving a county-owned building; or

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Sec. 271.054. **Competitive Bidding Requirement.** [70th Leg., 1987; Amended 73rd Leg., 1993]

Before the governing body of an issuer may enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than $15,000, the governing body must submit the proposed contact to competitive bidding.

Sec. 271.056. **Exemptions from Advertisement Requirement.** [70th Leg., 1987]

The provisions of this subchapter relating to the advertisement for competitive bids do not apply to:

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(4) a contract for personal or professional services;

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(10) a municipal procurement of a kind that, under Chapter 252, is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter; or

(11) a county contract that, under the County Purchasing Act (Subchapter C, Chapter 262), is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter.

Subchapter D. **State Cooperation in Local Purchasing Programs.**

Sec. 271.081. **Definition.** [70th Leg., 1987]

In this subchapter, "local government" means a county, municipality, special district, school district, junior college district, or other legally constituted political subdivision of the state.

Sec. 271.082. **Purchasing Program.** [70th Leg., 1987]

(a) The State Purchasing and General Services Commission shall establish a program by which the commission performs purchasing services for local governments. The services must include:

(1) the extension of state contract prices to participating local governments when the commission considers it feasible;

(2) solicitation of bids on items desired by local governments if the solicitation is considered feasible by the commission and is desired by the local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(b) The commission may charge a participating local government an amount not to exceed the actual costs incurred by the commission in providing purchasing services to the local government under the program.

(c) The commission may adopt rules and procedures necessary to administer the purchasing program.

Sec. 271.083. **Local Government Participation.** [70th Leg., 1987; Amended 74th Leg., 1995]

(a) A local government may participate in the purchasing program of the commission by filing with the commission a resolution adopted by the governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, and to the extent the commission deems feasible, and stating that the local government will:

(1) designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;

(2) be responsible for:

(A) submitting requisitions to the commission under any contract; or

(B) electronically sending purchase orders directly to vendors and electronically sending to the commission reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the commission;

(3) be responsible for making payment directly to the vendor; and

(4) be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

(b) A local government that purchases an item under a state contract satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

Subchapter F. **Cooperative Purchasing Program.**

Sec. 271.102. **Cooperative Purchasing Program Participation.** [74th Leg., 1995]

(a) A local government may participate in a cooperative purchasing program with another local government or a local cooperative organization.

(b) A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the signing local government will:

(1) designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;

(2) make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under this subchapter, as provided in the agreement between the participation local governments or between a local government and a local cooperative organization; and

(3) be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

(c) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

Title 9. **PUBLIC BUILDINGS.**
Subtitle A. **MUNICIPAL PUBLIC BUILDINGS.**
Chapter 281. **MUNICIPAL CIVIC CENTER AUTHORITIES.**
Subchapter D. **Powers and Duties.**

Sec. 281.044. **Facilities.** [70th Leg., 1987]

(a) An authority may establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain all or a designated part of:

(1) a public improvement such as a....library....

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Sec. 281.046. **Contracts.** [70th Leg., 1987]

(a) An authority contracts in the name of the authority.

(b) An authority may contract with the United States, this state, or a political subdivision or governmental agency of the United States or this state, for furnishing all or a part of the authority's services or facilities or for the joint ownership and operation of facilities, improvements, or equipment necessary to accomplish a purpose permitted by the authority.

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Sec. 281.050. **Acquisition of Land and Other Property.** [70th Leg., 1987]

(a) An authority may acquire land, materials, easements, rights-of-way, or other property considered necessary, incidental, or helpful to the accomplishment of a purpose stated in Section 281.044, including property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the authority's facilities. An authority may acquire the property by gift, grant, purchase, or condemnation.

(b) An authority may acquire fee simple title to, or an easement on, public or private land located in or out of the authority's boundaries. An authority may acquire title to, or an easement on, property that is not held in fee.

(c) An authority may lease property on terms the board considers advantageous to the authority.

Sec. 281.051. **Eminent Domain.** [70th Leg., 1987]

(a) An authority may acquire land, easements, or other property within its boundaries by condemnation. The authority may condemn the fee simple title or an easement. The board shall institute condemnation proceedings in the name of the authority and shall direct the proceedings.

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Subchapter F. **Contracts With Civic Center Authorities.**

Sec. 281.091. **Authorization; Purposes.** [70th Leg., 1987]

On terms a municipality considers desirable, fair, and advantageous and with the approval of a majority of the governing body, a municipality may make a contract with civic center authority under which the authority, for the benefit of the municipality, exercises its authority under Section 281.044. Under the contract, the authority may provide to the municipality all or part of its authorized services and facilities, in or out of the municipality's boundaries. The term of the contract may not be longer than 40 years.

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Subtitle C. **PUBLIC BUILDING PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT.**
Chapter 305. **MISCELLANEOUS PUBLIC BUILDING PROVISIONS AFFECTING MUNICIPALITIES AND COUNTIES.**

Sec. 305.001. **Joint Construction and Maintenance of Buildings by Certain Counties and Municipalities.** [70th Leg., 1987]

(a) This section applies only to a municipality with 2,000 or more inhabitants that is located more than 10 miles from the county seat of the county in which the municipality is located, and to the county in which the municipality is located.

(b) The county and the municipality may jointly own, construct, equip, enlarge, and maintain a building in the municipality, to be used by the justice of the peace, for county branch offices, for a county library, and for a city hall. The county and the municipality must hold in joint ownership the title to the land on which the building stands.

(c) The cost of construction of the building shall be paid from current income and funds on hand, as provided in the budgets or the tax levies of the county and municipality.

Annual expenses for the operation and maintenance of the building shall be budgeted by the county and the municipality.

(d) The county and the municipality shall specify in a contract between them:

(1) the amount or proportionate share of the cost of construction and equipment that each party shall contribute;

(2) the party with authority to award contracts, or the fact that awards are to be made by action of both parties;

(3) the account in which funds contributed under Subdivision (1) shall be deposited; and

(4) the procedure by which disbursements from that account shall be authorized.

(e) The contract may provide for:

(1) the appointment of a committee or board to operate and maintain the building;

(2) the delegation of operation and maintenance responsibility to either of the parties; or

(3) the division of annual operation and maintenance expenses between the parties.

Title 10. **PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES.**

Subtitle A. **MUNICIPAL PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES.**

Chapter 315. **MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES.**

Sec. 315.005. **Municipal Library In Type A General-Law Municipality.** [70th Leg., 1987]

A Type A general-law municipality may establish a free library in the municipality, adopt rules for the proper management of the library, and appropriate municipal revenues for the library's management or improvement.

Subtitle B. **COUNTY PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES.**

Chapter 323. **COUNTY LIBRARIES.**

Subchapter A. **County Library.**

Sec. 323.001. **Establishment and Maintenance.** [70th Leg., 1987]

(a) The commissioners court of a county may, on its own motion, and shall, on the petition by a majority of the voters of the affected part of the county, establish, maintain, and operate a free county library for the area of the county located outside the municipalities that maintain free public libraries.

(b) The county library shall be located at the county seat in the courthouse unless a more suitable location is available.

Sec. 323.002. **Maintenance Funds.** [70th Leg., 1987]

The commissioners court annually may set aside from the general fund or the permanent improvement fund of the county an amount to be used to maintain or to make a permanent improvement or acquire land for the county library. The amount may not exceed 12 cents on the $100 valuation of all property:

(1) located in the county outside the municipalities that are supporting a free public library and that are not participating in the county library system; and

(2) located within the municipalities that are supporting a free public library and that have elected to become a part of the county library system.

Sec. 323.003. **Gifts.** [70th Leg., 1987]

The commissioners court may receive a gift, bequest, or devise for the county library or a branch or subdivision of the library. Title to property given, bequeathed, or devised to the county library vests in the county. A gift or bequest made for the benefit of a branch of the library shall be administered as designated by the donor.

Sec. 323.004. **Farmers' County Library.** [70th Leg., 1987]

In a county that has a farmers' county library established under prior law, the library shall continue to operate as a farmers' county library, but if a county library is established in the county, the farmers' county library shall become a part of the county library.

Sec. 323.005. **Librarian.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) If a county library is established, the commissioners court shall employ a county librarian. A person holds the position of county librarian at the pleasure of the commissioners court.

(b) A person is not eligible for appointment as a county librarian unless the person has first obtained from the Texas State Library and Archives Commission a county librarian's certificate of qualification. If a person has received the certificate and has served as a county librarian, further examination and certification by the commission is not required for employment or re-employment of the person as a county librarian. Before beginning to perform duties, a person employed as county librarian must file with the county clerk the official oath, and at the discretion of the commissioners court, execute a bond conditioned that the person will faithfully perform the duties of the position. The bond must be in an amount determined by the commissioners court and must be purchased from sufficient sureties approved by the county judge.

(c) The county librarian shall attempt to provide equal and complete service to all areas of the county through branch libraries and deposit stations in schools and other suitable locations and shall distribute books, other printed matter, and other educational materials as quickly as circumstances permit. The librarian may make rules for the

operation of the county library, establish branch libraries and deposit stations in the county, determine the number and type of employees needed by the library, and hire and dismiss the employees in the same manner as provided by the commissioners court for other county departments. The librarian shall, subject to the general rules adopted by the commissioners court, develop and manage the library in accordance with accepted rules of library management and shall determine which books and library equipment will be purchased.

(d) On or before October 1 of each year, the county librarian shall report to the commissioners court and the state librarian on the operation of the county library during the year ending on the preceding August 31. The report must be made on a form furnished by the state librarian and must contain a statement of the condition of the library and a statement of its operation during the year and must contain financial and book statistics customarily kept by well-regulated libraries.

Sec. 323.006. **Supervision.** [70th Leg., 1987]

The county library is under the general supervision of the commissioners court. It is also under the supervision of the state librarian who, in person or by an assistant, shall periodically visit the library, inquire as to its condition, advise the librarian and the commissioners court about the library, and give whatever assistance possible in matters that relate to the library.

Sec. 323.007. **Library Fund.** [70th Leg., 1987]

Funds of the county library shall be deposited in a separate fund to be known as the county free library fund and may be used only for library purposes. The funds are under the custody of the county treasurer or any other county official designated to discharge the duties commonly assigned to the county treasurer.

Sec. 323.008. **Participation With a Municipality.** [70th Leg., 1987]

(a) If a county library is established, the governing body of a municipality that maintains a free public library may notify the commissioners court that the municipality desires to become a part of the county library system. After the notice is given, the municipality is considered to be a part of the system, and the residents of the municipality are entitled to the benefits of the library. Property in the municipality shall be included in determining the amount to be set aside in the county free library fund for county library purposes.

(b) The commissioners court of a county that has established a county library may contract with the governing body of a municipality that maintains a free public library to extend county library privileges to the municipality's residents to the extent and for consideration as the parties may agree. The consideration paid by the municipality shall be deposited in the county free library fund. On the making of the contract, the library privileges are extended to the residents of the municipality.

(c) After a municipality has been a part of the county library system for two years, the governing body of the municipality may withdraw from the system by giving notice of its intention to do so to the commissioners court. The notice must be given at least six months before the withdrawal. On withdrawal, the municipality is no longer entitled to participate in the benefits of the system, and the property located in the municipality may not be included in computing the amount to be set aside for county library purposes. Before the governing body may give the notice of withdrawal to the commissioners court or before the governing body may retract the notice of withdrawal after it has been given to the commissioners court, the governing body must publish another notice once a week for six consecutive weeks in a county newspaper circulated throughout the municipality and designated by the governing body. The published notice must state the nature of the proposed action and the date and location of the meeting at which the proposed action is to be taken.

Sec. 323.009. **Participation With A County.** [70th Leg., 1987]

(a) The commissioners court of a county that has established a county library may contract with the commissioners court of another county to extend county library privileges to the residents of the other county to the extent and for the consideration as the parties may agree. The consideration received from the other county shall be deposited in the county free library fund. On the making of the contract, the library privileges are extended to the residents of the other county.

(b) The other county may provide for a county free library fund in the same manner in which a county that establishes a county library may provide for the fund. The purpose of the fund is to carry out a contract made by the other county under Subsection (a).

(c) If the other county makes a contract under Subsection (a), it is not prohibited from establishing its own county library under this subchapter, and if it does so, it may terminate the contract on mutually agreeable terms or may continue under the contract until expiration of its term.

Sec. 323.010. **Joint Library.** [70th Leg., 1987]

(a) The commissioners court of a county may establish in cooperation with other counties a joint free county library for the benefit of the cooperating counties.

(b) The commissioners courts of two or more adjacent counties may jointly establish and maintain a free library under the terms and provisions established by this subchapter for the establishment and maintenance of a free county library. In doing so, the commissioners courts of the participating counties shall operate jointly in the same manner as the commissioners court of a single county. The participating counties have the same powers and are subject to the same liabilities under this subchapter as a single county.

(c) If a county withdraws from the joint county library, it is entitled to a division of property according to terms agreed on at the time the library was established.

Sec. 323.011. **Participation With an Established Library.** [70th Leg., 1987; Amended 73rd Leg., 1993]

(a) Instead of establishing a county library, the commissioners court of a county may contract for library privileges from an established library.

(b) The contract must provide that the established library assume the functions of a county library within the county, including municipalities in the county, and must provide that the librarian of the established library hold or secure a county librarian's certificate from the Texas State Library and Archives Commission. The commissioners court may contract to pay annually to the established library out of the general fund of the county an amount on which the parties may agree.

(c) Either party to the contract may terminate it by giving to the other party six months' notice of its intention to do so. Property acquired under the contract is subject to division on termination of the contract on terms specified in the contract.

Sec. 323.012. **Participation With a Privately Owned Library.** [70th Leg., 1987]

The commissioners court of a county that has established a county library may contract with a privately owned library that serves an area of the county not adequately served by the county library to provide county library service to that area. The contract may require that the privately owned library submit to any reasonable regulation that is imposed on governmental libraries.

Sec. 323.013. **Discontinuation of Library.** [70th Leg., 1987]

A county library may be discontinued on petition of a majority of the voters in that part of the county that maintains the library. The commissioners court shall, on termination of existing contracts, call in and inventory all books and other movable property of the discontinued library and shall store the property under lock and seal in a suitable place in the county courthouse.

Subchapter B. **County Law Library.**

Sec. 323.021. **Establishment and Maintenance.** [70th Leg., 1987]

(a) The commissioners court of a county by order may establish and maintain a county law library at the county seat.

(b) The commissioners court shall provide suitable space for housing the library at a place that is both convenient and accessible to the judges and litigants of the county. The commissioners court may, with the advice of the committee created under Section 323.024, use funds collected under this subchapter to acquire a location for the library, though priority in the use of funds shall be given to the acquisition of books, periodicals, other library materials, and staff for the library. The commissioners court may appropriate an amount not to exceed $20,000 to establish the library and shall annually appropriate an amount necessary for the proper maintenance and operation of the library.

Sec. 323.022. **Gifts.** [70th Leg., 1987]

The commissioners court may receive any gift or bequest to the law library. Title to a gift or bequest vests in the county. A conditional gift or bequest shall be administered as designated by the donor.

Sec. 323.023. **Law Library Fund.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) A sum set by the commissioners court not to exceed $20 shall be taxed, collected, and paid as other costs in each civil case filed in a county or district court, except suits for delinquent taxes. The county is not liable for the costs.

(b) The clerks of the respective courts shall collect the costs and pay them to the county treasurer, or to any other official who discharges the duties commonly delegated to the county treasurer, for deposit in a fund to be known as the county law library fund. The fund may be used only for the purpose of establishing the law library after the entry of the order creating it or for the purpose of purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library.

(c) The county law library fund shall be administered by or under the direction of the commissioners court.

Sec. 323.024. **Management.** [70th Leg., 1987]

(a) The commissioners court of a county that has established a law library under this subchapter shall adopt rules for the use of books in the county law library.

(b) The commissioners court may vest management of the library in a committee selected by the county bar association. Actions of the committee are subject to approval by the commissioners court.

Sec. 323.025. **Claims.** [70th Leg., 1987]

A claim against the law library shall be handled as other claims against the county.

Subtitle C. **PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT.**

Chapter 331. **MUNICIPAL AND COUNTY AUTHORITY TO ACQUIRE AND MAINTAIN PARKS, MUSEUMS, AND HISTORIC SITES.**

Sec. 331.002. **Acquisition of Historic Objects.** [70th Leg., 1987]

A municipality or county may acquire by gift or purchase, individually or in a collection, any historic book, painting, sculpture, coin, or other object or collection of historical significance to the municipality or county.

Title 11. **PUBLIC SAFETY.**

Subtitle B. **COUNTY PUBLIC SAFETY.**

Chapter 351. **COUNTY JAILS AND LAW ENFORCEMENT.**

Subchapter C. **Operation Of County Jails.**

Sec. 351.0415. **Commissary Operation by Sheriff.** [71st Leg., 1989; Amended 74th Leg., 1995]

(a) The sheriff of a county may operate...a commissary for the use of the prisoners committed to the county jail....

••••

(c) The sheriff may use commissary proceeds only to:

••••

(4) fund, staff, and equip a library for the educational use of county prisoners.

••••

Title 12. **PLANNING AND DEVELOPMENT.**

Subtitle A. **MUNICIPAL PLANNING DEVELOPMENT.**

Chapter 372. **IMPROVEMENT DISTRICTS IN MUNICIPALITIES.**

Subchapter A. **Public Improvement Districts.**

Sec. 372.001. **Short Title.** [70th Leg., 1987]

This subchapter may be cited as the Public Improvement District Assessment Act.

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Sec. 372.002. **Exercise of Powers.** [70th Leg., 1987]

Powers granted under this subchapter may be exercised by a municipality in which the governing body of the municipality initiates or receives a petition requesting the establishment of a public improvement district. A petition must comply with the requirements of Section 372.005.

Sec. 372.003. **Authorized Improvements.** [70th Leg., 1987; Amended 71st Leg., 1989]

(a) If the governing body of a municipality finds that it promotes the interests of the municipality, the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or the municipality's extraterritorial jurisdiction. A project may be undertaken in the municipality or the municipality's extraterritorial jurisdiction.

(b) A public improvement project may include:

••••

(6) acquisition, construction, or improvement of libraries;

••••

(12) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;

••••

(14) payment of expenses incurred in the establishment, administration, and operation of the district.

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Title 7. **OFFENSES AGAINST PROPERTY.**
Chapter 28. **ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION.**

Sec. 28.03. **Criminal Mischief.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided for by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $20; or

(B) except as provided in Subdivision (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is $20 or more but less than $500;

(3) a Class A misdemeanor if the amount of pecuniar loss is:

(A) $500 or more but less than $1,500; or

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(4) a state jail felony if the amount of pecuniary loss is $1,500 or more but less than $20,000;

(5) a felony of the third degree if the amount of the pecuniary loss is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the amount of pecuniary loss is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the amount of pecuniary loss is $200,000 or more.

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Sec. 28.04. **Reckless Damage or Destruction.** [63rd Leg.,1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

Sec. 28.06. **Amount of Pecuniary Loss.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

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(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c), the amount of loss is deemed to be greater than $500 but less than $1,500.

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(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Chapter 31. **THEFT.**

Sec. 31.03. **Theft.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent;

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or

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(e) Except as provided by Subsection (f), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than:

(A) $50; or

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(2) a Class B misdemeanor if:

(A) the value of the property stolen is:

(I) $50 or more but less than $500; or

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(B) the value of the property stolen is less than:

(i) $50 and the defendant has previously been convicted of any grade of theft; or

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(3) a Class A misdemeanor if the value of the property stolen is $500 or more but less than $1,500;

(4) a state jail felony if:

(A) the value of the property stolen is $1,500 or more but less than $20,000...;

(B) regardless of value, the property is stolen from the person of another....

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(D) the value of the property stolen is less than $1,500 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the third degree if the value of the property stolen is $20,000 or more but less than $100,000...;

(6) a felony of the second degree if the value of the property stolen is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of the property stolen is $200,000 or more.

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense; and

(2) the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant.

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Sec. 31.04. **Theft of Service.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

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(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $20;

(2) a Class B misdemeanor if the value of the service stolen is $20 or more but less than $500;

(3) a Class A misdemeanor if the value of the service stolen is $500 or more but less than $1,500;

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Title 8. **OFFENSES AGAINST PUBLIC ADMINISTRATION.**

Chapter 39. **ABUSE OF OFFICE.**

Sec. 39.02. **Abuse of Official Capacity.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $20;

(2) a Class B misdemeanor if the value of the use of the thing misused is $20 or more but less than $500;

(3) a Class A misdemeanor if the value of the use of the thing misused is $500 or more but less than $1,500;

(4) a state jail felony if the value of the use of the thing misused is $1,500 or more but less than $20,000; and

(5) a felony of the third degree if the value of the use of the thing misused is $20,000 or more but less than $100,000;

(6) a felony of the second degree if the value of the use of the thing misused is $100,000 or more but less than $200,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $200,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

Sec. 39.03. **Official Oppression.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor.

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Sec. 39.06. **Misuse of Official Information.** [63rd Leg., 1973; Amended 74th Leg., 1995]

(a) A public servant commits an offense if, in reliance on information to which he has access by virtue of his office or employment and that has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

## Title 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY.

## Chapter 42. DISORDERLY CONDUCT AND RELATED OFFENSES.

Sec. 42.01. **Disorderly Conduct.** [63rd Leg., 1973 Amended 73rd Leg., 1993]

(a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place...;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) while on the premises of a hotel or comparable establishment, for a lewd or unlawful purpose looks into a guest room not his own through a window or other opening in the room;

(9) discharges a firearm in a public place other than a public road....

(10) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(11) discharges a firearm on or across a public road; or

(12) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section:

(1) an act is deemed to occur in a public place...if it produces its offensive or proscribed consequences in the public place...; and

(2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(9) or (a)(10), in which event it is a Class B misdemeanor.

Sec. 42.02. **Riot.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

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(e) Except as provided in Subsection (f), an offense under this section is a Class B misdemeanor.

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Sec. 42.03. **Obstructing Highway or Other Passageway.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1); or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

Sec. 42.04. **Defense When Conduct Consists of Speech or Other Expression.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) If conduct that would otherwise violate Section 42.01 (a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01 (a)(5) or 42.03:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

Sec. 42.05. **Disrupting Meeting or Procession.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

Sec. 42.06. **False Alarm or Report.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a public primary or secondary school,...in which event the offense is a state jail felony.

Sec. 42.07. **Harassment.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

(1) initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection; or

(6) knowingly permits a telephone under his control to be used by a person to commit an offense under this section.

(b) For purposes of Subsection (a)(1), "obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function....

(c) An offense under this section is a Class B misdemeanor.

Chapter 43. **PUBLIC INDECENCY.**

Subchapter B. **Obscenity.**

Sec. 43.21. **Definitions.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or;

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Sec. 43.22. **Obscene Display or Distribution.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. **Obscenity.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) is a state jail felony.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or;

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) It is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a devices proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.

Sec. 43.24. **Sale, Distribution, or Display of Harmful Material to Minor.** [63rd Leg., 1973; Amended 73rd Leg., 1993]

(a) For purposes of this section:

(1) "Minor" means an individual younger than 18 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) of this section.

(c) It is a defense to prosecution under this section that:

(1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or

(2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) of this section in which event it is a felony of the third degree.

Sec. 43.25. **Sexual Performance by a Child.** [65th Leg., 1977; Amended 73rd Leg., 1993]

(a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.

(2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" has the meaning defined by Section 43.01 of this code.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) of this section is a felony of the second degree.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.

(e) An offense under Subsection (d) of this section is a felony of the third degree.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant, in good faith, reasonably believed that the child who engaged in the sexual conduct was 18 years of age or older;

(2) the defendant was the spouse of the child at the time of the offense;

(3) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(4) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 of this code to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

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Sec. 43.26. **Possession or Promotion of Child Pornography.** [Amended 73rd Leg., 1993]

(a) A person commits an offense if:

(1) the person knowingly or intentionally possesses material containing a film image that visually depicts a child younger than 18 years of age at the time the film image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1) of this subsection.

(b) In this section:

(1) "Film image" includes a photograph, slide, negative, film, or videotape, or a reproduction of any of these.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Promote" has the meaning assigned by Section 43.25.

(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.

(d) An offense under Subsection (a) is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).

(f) A person who possesses six or more identical film images depicting a child as described by Subsection (a)(1) is presumed to possess the film images with the intent to promote the material.

(g) An offense under Subsection (e) is a felony of the third degree.

Title 10. **OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS.**

Chapter 46. **WEAPONS.**

Sec. 46.02. **Unlawful Carrying Weapons.** [63rd Leg., 1973; Amended 74th Leg., 1995]

(a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

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(b) It is a defense to prosecution under this section that the actor was, at the time of the offense:

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*[Note: At the time of printing this publication the statute contains three subd. (7)'s, one of which is shown here.]*

(7) carrying a concealed handgun and a valid license issued under Article 4413(29ee), Revised Statutes, to carry a concealed handgun of the same category as the handgun the person is carrying.

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(e) Except as provided in Subsection (f), an offense under this section is a Class A misdemeanor.

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Sec. 46.03. **Places Weapons Prohibited.** [63rd Leg., 1973; Amended 74th Leg., 1995]

(a) A person commits an offense if, with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a), he intentionally, knowingly, or recklessly goes:

(1) on the physical premises of a school or educational institution, any grounds or building on which an activity sponsored by a school or educational institution is being conducted, or a passenger transportation vehicle of a school or educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

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(f) It is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a concealed handgun under Article 4413(29ee), Revised Statutes.

*[Note: At the time of printing this publication the statute contains two subsec. (g)'s, one of which is shown here.]*

(g) An offense under this section is a third degree felony.

Sec. 46.035. **Unlawful Carrying of Handgun by License Holder.** [74th Leg., 1995]

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(c) A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Article 4413(29ee), Revised Statues, regardless of whether the handgun is concealed, at any meeting of a governmental entity.

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Sec. 46.08. **Hoax Bombs.** [68th Leg., 1983; Amended 73rd Leg., 1993]

(a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

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Sec. 46.11. **Penalty if Offense Committed Within Weapon-Free School Zone.** [74th Leg., 1995]

Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

(1) within 300 feet of the premises of a school; or

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Chapter 48. **CONDUCT AFFECTING PUBLIC HEALTH.**

Sec. 48.01. **Smoking Tobacco.** [64th Leg., 1975; Amended 73rd Leg., 1993]

(a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed $500.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

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(f) An offense under this section is punishable as a Class C misdemeanor.

Chapter 49. **INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES.**

Sec. 49.02. **Public Intoxication.** [73rd Leg., 1993]

(a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) An offense under this section is a Class C misdemeanor.

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Title 4. **ACTIONS AND REMEDIES.**
Chapter 24. **FORCIBLE ENTRY AND DETAINER.**

Sec. 24.0062. **Warehouseman's Lien.** [69th Leg., 1985; Amended 73rd Leg., 1993]

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(e) On demand by the tenant within 30 days after the date the property is stored by the warehouseman and on payment by the tenant of the moving and storage charges reasonably attributable to the items being redeemed, the warehouseman shall return to the tenant at the warehouse the following property:

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(3) school books;
(4) a family library;

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Title 5. **LIENS AND EXEMPT PROPERTY.**
Chapter 43. **EXEMPT PUBLIC PROPERTY.**

Sec. 43.001. **Exempt Public Library.**
A public library is exempt from attachment, execution, and forced sale.

Chapter 54. **LANDLORD'S LIENS.**
Subchapter C. **Residential Landlord's Lien.**

Sec. 54.042. **Exemptions.** [Amended 69th Leg., 1985]
A lien under this subchapter does not attach to:

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(2) tools, apparatus, and books of a trade or profession;
(3) schoolbooks;
(4) a family library;

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Title 1. **PROPERTY TAX CODE.**
Chapter 11. **TAXABLE PROPERTY AND EXEMPTIONS.**
Subchapter B. **Exemptions.**

Sec. 11.11. **Public Property.** [Amended 71st Leg., 1989]

(a) Except as provided by Subsections (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

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Sec. 11.18. **Charitable Organizations.** [Amended 72nd Leg., 1991]

(a) An organization that qualifies as a charitable organization as provided by this section is entitled to an exemption from taxation of the buildings and tangible personal property that:

(1) are owned by the charitable organization; and

(2) except as permitted by Subsection (b) of this section, are used exclusively by qualified charitable organizations.

(b) Use of exempt property by persons who are not charitable organizations qualified as provided by this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

(c) To qualify as a charitable organization for the purposes of this section, an organization, whether operated by an individual, as a corporation, as a foundation, as a trust, or as an association, must meet the applicable requirements of Subsections (d), (e), (f), and (g) of this section.

(d) A charitable organization must be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsection (h) of this section, engage exclusively in performing one or more of the following charitable functions:

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(5) promoting or operating a museum, zoo, library, theater of the dramatic or performing arts, or symphony orchestra or choir;

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(e) A charitable organization must be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization performs one or more of the charitable functions specified by Subsection (d) of this section other than a function specified in Subdivision (1), (2), (8), (9), (12), or (16), be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.

(f) A charitable organization must, by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(1) pledge its assets for use in performing the organization's charitable functions; and

(2) direct that on discontinuance of the organization by dissolution or otherwise:

(A) the assets are to be transferred to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended; or

(B) if required for the organization to qualify as a tax-exempt organization under Section 501(c)(12), Internal Revenue Code of 1986, as amended, the assets are to be transferred directly to the organization's members, each of whom, by application for an acceptance of membership in the organization, has agreed to immediately transfer those assets to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended, as designated in the bylaws, charter, or regulation adopted by the organization.

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(h) Performance of noncharitable functions by a charitable organization that owns or uses exempt property does not result in loss of an exemption authorized by this section if those other functions are incidental to the organization's charitable functions.

(i) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

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Title 2. **STATE TAXATION.**
Subtitle E. **SALES, EXCISE AND USE TAX.**
Chapter 151. **LIMITED SALES, EXCISE, AND USE TAX.**
Subchapter E. **Resale And Exemption Certificates.**

Sec. 151.155. **Exemption Certificate.** [67th Leg., 1981; Amended 74th Leg., 1995]

(a) If a purchaser certifies in writing to a seller that a taxable item sold, leased, or rented to the purchaser will be used in a manner or for a purpose that qualifies the sale of the item for an exemption from the taxes imposed by this chapter, and if the purchaser then uses the item in some other manner or for some other purpose, the purchaser is liable for the payment of the sales tax on the value of the taxable item for any period during which the item is used in the divergent manner or for the divergent purpose.

(b) The value of an item of tangible personal property is the fair market rental value of tangible personal property,



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which is the amount that a purchaser would pay on the open market to rent or lease the property for his use. The value of a taxable service is the fair market value of the taxable service, which is the amount that a purchaser would pay on the open market to obtain the service for the use of the purchaser.

(c) If an item of tangible personal property has no fair market rental value or if a taxable service has no fair market value, the original purchase price shall be the measure of tax.

(d) At any time, the person making the divergent use may cease paying tax on the fair market rental value or fair market value and may pay sales tax on the original purchase price without credit for taxes previously paid.

(e) A purchaser of a taxable item who gives an exemption certificate is not liable for the tax imposed by this chapter if he donates the taxable item to an organization exempted under Section 151.309 or 151.310(a)(1) or (2) of this code; except that any use by the purchaser of the taxable item other than retention, demonstration, or display shall be subject to taxes imposed by this section.

Subchapter H. **Exemptions.**

Sec. 151.309. **Governmental Entities.** [67th Leg., 1981; Amended 73rd Leg., 1993]

A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following governmental entities is exempted from the taxes imposed by this chapter:

(1) the United States;

(2) an unincorporated instrumentality of the United States;

(3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States;

(4) this state;

(5) a county, city, special district, or other political subdivision of this state; or

(6) a state, or a governmental unit of a state that borders this state, but only to the extent that the other state or governmental unit exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state.

Sec. 151.310. **Religious, Educational, and Public Service Organizations.** [67th Leg., 1981; Amended 74th Leg., 1995]

(a) A taxable item sold, leased, or rented to, or stored, used, or consumed by, any of the following organizations is exempted from the taxes imposed by this chapter:

(1) an organization created for religious, educational, or charitable purposes if no part of the net earnings of the organization benefits a private shareholder or individual and the items purchased, leased, or rented are related to the purpose of the organization;

(2) an organization qualifying for an exemption from federal income taxes under Section 501(c)(3), (4), (8), (10), or (19), Internal Revenue Code, if the item sold, leased, rented, stored, used, or consumed relates to the purpose of the exempted organization and the item is not used for the personal benefit of a private stockholder or individual;

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(b) The sale of, or contracting for the sale of, concessions at an event conducted by an organization exempted under Subsection (a)(3) of this section does not prevent the application of the exemption to that organization.

(c) An organization that qualifies for an exemption under Subsection (a)(1) or (a)(2) of this section, and each bona fide chapter of the organization, may hold two tax-free sales or auctions during a calendar year and each tax-free sale or auction may continue for one day only. The sale of a taxable item by a qualified organization or chapter of the organization at a tax-free sale or auction is exempted from the sales tax imposed by Subchapter C of this chapter. The storage, use, or consumption of a taxable item acquired from a qualified organization or chapter of the organization at a tax-free sale or auction is exempted from the use tax imposed by Subchapter D of this chapter until the item is resold or subsequently transferred.

(d) If two or more organizations jointly hold a tax-free sale or auction, neither organization may hold another tax-free sale or auction during the calendar year. The employment of and payment of a reasonable fee to an auctioneer to conduct a tax-free auction does not disqualify an otherwise qualified organization from receiving the exemption provided by Subsection (c) of this section.

Sec. 151.312. **Periodicals and Writings of Religious, Philanthropic, Charitable, Historical, Scientific, and Similar Organizations.** [67th Leg., 1981; Amended 71st Leg., 1989]

Periodicals and writings that are published or distributed by a religious, philanthropic, charitable, historical, scientific, or other similar organization that is not operated for profit, but excluding an educational organization, are exempted from the taxes imposed by this chapter.

Title 3. **LOCAL TAXATION.**
Subtitle C. **LOCAL SALES AND USE TAXES.**
Chapter 321. **MUNICIPAL SALES AND USE TAX ACT.**
Subchapter C. **Computation of Taxes.**

Sec. 321.207. **Local Tax Inapplicable When No State Tax; Exceptions.** [70th Leg., 1987; Amended 72nd Leg., 1991]

(a) The sales tax authorized by this chapter does not apply to the sale of a taxable item unless the sales tax imposed by Subchapter C, Chapter 151, also applies to the sale.

(b) The excise tax authorized by this chapter on the use, storage, or consumption of a taxable item does not apply to the use, storage, or consumption of a taxable item unless the tax imposed by Subchapter D, Chapter 151, also applies to the use, storage, or consumption.

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(d) Subsection (b) does not apply to the application of the tax in a situation described by Section 321.205(b).

Article I. **General Government.**
**Library and Archives Commission.**

3. **Disbursement of Library Development Funds.** The Texas State Library and Archives Commission is hereby authorized to disburse to major resource systems and regional systems those general revenue funds appropriated in Strategy A.1.2., Texas Library System, in a manner consistent with Section 441.138, Government Code V.T.C.A., in order to satisfy the requirements of the federal maintenance of effort provisions in 34 C.F.R., Section 770, et. seq. The Commission is also authorized to promulgate rules necessary to administer these disbursements.

4. **Appropriation of Microfilming and Shredding Fees.** The Library and Archives Commission is hereby authorized to collect fees from state agencies and local governments for the purpose of cost recovery of microfilming and shredding state and local government records. Those receipts are appropriated to the Texas State Library and Archives Commission for the biennium and their expenditure is hereby authorized.

5. **Reimbursement of Advisory Committee Members.** Pursuant to V.T.C.S., Article 6252-33, reimbursement of expenses for advisory committee members, out of funds appropriated above is limited to the following advisory committees:

Library System[s] Act Advisory Board
Library Services [and] Construction Act Advisory Council
Texas Historical Records Advisory Board
Local Government Records Committee
Records Management and Preservation Advisory Committee

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7. **Assistance to Public Libraries.** Out of funds appropriated above in Strategy A.1.1., Library Resources, $1,250,000 each year shall be used to assist public libraries gain access to the Internet and electronic information.

8. **Appropriation: Print Access Aids.** Out of funds appropriated above in Strategy A.2.1., Disabled Services, $203,775 is appropriated in fiscal 1996 and $187,735 is appropriated in fiscal 1997 for the purpose of purchasing print access aids for public libraries for use by persons who are visually disabled. The Library and Archives Commission shall ensure that print access aids are equitably distributed among public libraries throughout the state based on need and geographic location.

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Article IX. **General Provisions.**
**Other Employment Policies and Provisions.**

*Sec. 5* **Political Aid and Legislative Influence Prohibited.**

None of the moneys appropriated by this Act, regardless of their source or character, shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the state from furnishing to any Member of the Legislature or committee upon request, or to any other state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from state employment.

No funds under the control of any state agency or institution, including but not limited to state appropriated funds, may be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of the State of Texas or the government of the United States.

None of the funds appropriated in this Act shall be expended in payment of the salary for full-time employment of any state employee who is also the paid lobbyist of any individual, firm, association or corporation. None of the funds appropriated by this Act shall be expended in payment of the partial salary of a part-time employee who is required to register as a lobbyist by virtue of the employees activities for compensation by or on behalf of industry, a profession or association related to operation of the agency or institution for which the person is employed. A part-time employee may serve as a lobbyist on behalf of industry, a profession or association so long as such entity is not related to the agency with which he or she is employed.

No employee of any state agency shall use any state-owned automobile except on official business of the state, and such employees are expressly prohibited from using such automobile in connection with any political campaign or any personal or recreational activity.

None of the moneys appropriated by this Act shall be paid to any official or employee who violates any of the provisions of this section.

The head or heads of each agency of the state shall furnish each employee of such agency with a copy of the five (5) paragraphs immediately preceding this one, and shall take a receipt therefor from each employee. The preceding sentence shall not be construed to mean that new receipts are to be obtained each year from continuing employees who have previously receipted for copies of identical provisions prohibiting political aid and legislative influence. The receipts shall be kept accessible for public inspection.

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**Budget Policy and Appropriation Management.**

Sec. 69. **Special Fiscal Year Determination Procedures.**

(1) Subscriptions to magazines and newspapers. The funds appropriated by this Act to a state agency for a particular fiscal year may be used to pay for the complete cost or a magazine or newspaper subscription even if the subscription covers more than one fiscal year.

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### ARCHIVES DIVISION OF TEXAS STATE LIBRARY TO REMAIN IN OR NEAR CAPITOL

(S.C.R. No. 7, 45th Legislature -- First Called Session, 1937)

WHEREAS, The Archives Division of the Texas State Library is housed in the basement of the Capitol Building; and

WHEREAS, There has come to the notice of the writer recently that the State Library Commission is thinking of removing it to some building not yet designated, belonging to the University of Texas; and

WHEREAS, The Archives Division, containing the records of the Republic of Texas and of the State of Texas, is constantly used by the Legislature, State Departments, Judiciary, and general public, and same is the property of the State of Texas rather than any department or institution thereof; and

WHEREAS, It is imperative that these priceless records should remain in close proximity to the State Capitol and be housed so as to be given more room for assembling and use; now, therefore, be it

RESOLVED, By the Senate of Texas, the House of Representatives concurring, that under no circumstances shall said archives and records be removed from the custody of the Texas State Library and from the Capitol grounds and close proximity; and, be it further

RESOLVED, That the State Board of Control be requested to assign additional space for housing said records and archives of the Division of the Texas State Library in some such convenient building on or near the Capitol Campus in order that they may ever remain where they can be conveniently used by the Legislature and other State Officials who work in the Capitol Building.

### SOUTHERN METHODIST UNIVERSITY -- POSSESSION OF LEGISLATIVE RECORDS

(S.C.R. No. 81, 65th Legislature, 1977)

WHEREAS, Southern Methodist University has accepted the responsibility for housing certain records of the legislature, more particularly described as records of the Texas Legislative Service Library which include various types of related records, copies of measures as introduced, substitutes, amendments, adopted or not, engrossed documents, enrolled documents, many obtainable committee records, and some arguments pro and con, from 1925 through 1964; and

WHEREAS, This acceptance on the part of Southern Methodist University will entitle graduate students and other interested citizens of Texas the opportunity to review these old records; now, therefore, be it

RESOLVED by the Senate of the 65th Legislature, the House of Representatives concurring, That the physical possession of these records shall be transferred to Southern Methodist University and made available to their students and the general public.

### CAPITOL -- ARCHIVE WAR MARKER

(H.C.R. No. 58, 66th Legislature, 1979)

WHEREAS, The Archive War of Texas in 1842 determined that Austin would remain the capital of Texas, and this event is a valuable reminder of the importance of proper record keeping by government; and

WHEREAS, In order that the people of Texas and visitors from other states who visit our capitol complex every year might know the importance of the Archive War of Texas, the Travis County Historical Commission and the Texas Historical Commission have provided the capitol complex with a historical marker relating this unique story; and

WHEREAS, It is appropriate that this historical marker be permanently displayed on the capitol grounds in front of the Lorenzo de Zavala State Archives and Library Building for the benefit of all Texas and out-of-state visitors to our beautiful, historic capitol; now, therefore, be it

RESOLVED by the House of Representatives of the State of Texas, the Senate concurring, That the 66th Legislature hereby request the State Board of Control to place the Archive War marker in a suitable permanent position on the capitol grounds in front of the Lorenzo de Zavala State Archives and Library Building; and, be it further

RESOLVED, That an official copy of this resolution be prepared and forwarded to the chairman of the State Board of Control as an expression of the views of the members of the Texas Legislature.

**CAPITOL -- DISPLAY OF TEXAS HISTORY, CAPITOLS, AND LEGISLATIVE PROCESS**
(H.C.R. No. 82, 66th Legislature, 1979)

WHEREAS, The tourist who visit the State Capitol are interested in learning about the history and construction of the capitol and the governmental activities which are conducted within its walls; and

WHEREAS, The presentation by the capitol tour guides would be greatly enhanced by the installation of a permanent exhibit dealing with such topics as the history of Texas, previous capitols of Texas, the history and construction of the present capitol, and the legislative process; and

WHEREAS, There is a display area appropriate for such purposes located in the north wing of the third floor of the capitol; and

WHEREAS, At present, this display area contains a temporary exhibit provided by the Institute of Texas Cultures and needs a more permanent plan for utilization; and

WHEREAS, The installation of a secure glass-encased, maintenance-free exhibit comprised of photographs, written narratives, and artifacts made available through the Texas House of Representatives, State Archives, the Austin-Travis County Collection, The Texas Historical Commission, and other sources would greatly enhance the public's enjoyment and understanding of the State Capitol; now, therefore, be it

RESOLVED by the House of Representatives of the State of Texas, the Senate concurring, That the 66th Legislature hereby direct the Texas Historical Commission, in coordination with the archives division of the Texas State Library, to design a permanent display dealing with the history of Texas, the history and construction of its capitols, and the legislative process; and, be it further

RESOLVED, That the State Board of Control be directed to provide for the construction of this permanent display according to the design plans; and, be it further

RESOLVED, That Mr. Truett Latimer of the Texas Historical Commission be placed in charge of design and coordination of the project, with Dr. David Gracy of the archives division acting as consultant, to assure that the exhibit is authentic and informative; and, be it further

RESOLVED, That, following completion of the project, the Texas Historical Commission be directed to act as curator and the State Board of Control to provide security and maintenance for the display; and, be it further

RESOLVED, That construction of this display be funded by an appropriation of this legislature. The State Board of Control may accept donations of money for construction of the display, and such funds received by the board shall reduce the legislative appropriation by the same amount; and, be it further

RESOLVED, That official copies of this resolution be forwarded to the director of the Texas Historical Commission, the director and librarian of the Texas State Library, and the executive director of the State Board of Control as an expression of the views of the legislature of the State of Texas.

**UNITED STATES CONSTITUTION -- AMENDMENTS XIII, XIV, AND XV**
(H.C.R. No. 30, 74th Legislature, 1995)

WHEREAS, In response to an Act of Congress approved April 10, 1869, the 12th Legislature of the State of Texas convened in Provision Session from February 8 to February 24, 1870, and ratified Amendments XIII, XIV, and XV to the United States Constitution; and

WHEREAS, Those federal constitutional amendments, each ratified by separate joint resolutions of the 12th Legislature on February 15, 1870, solidified some of the most precious rights that have been guaranteed constitutionally to Americans, particularly ethnic minorities who were granted the blessings of equal citizenship and the beginning of an end to their past oppression; and

WHEREAS, Amendment XIII eliminated forever the practice of slavery, Amendment XIV promised due process and the equal protection of the laws, and Amendment XV prohibited denial of suffrage on the grounds of race, color, or previous condition of servitude; and

WHEREAS, Over time, copies of the three resolutions regrettably have vanished from the holdings of the Texas state archives, yet others are preserved in Washington, D.C., by virtue of their certification and transmittal to the Secretary of State of the United States and to the presiding officers of the United States Congress; and

WHEREAS, The 1995 Regular Session of the 74th Legislature coincides with the 125th anniversary of these historic ratification actions and marks an appropriate time for the conveyance to this state of replicas of the three resolutions so that Texans may view and appreciate a series of documents that have played such an important role in the extension and elaboration of their civil rights; now, therefore, be it

RESOLVED, That the 74th Legislature of the State of Texas, Regular Session, 1995, hereby respectfully request the National Archives and Records Administration to make copies of the joint resolutions of the 12th Texas Legislature ratifying Amendments XIII, XIV, and XV to the United States Constitution and transmit those copies to the Texas State Library and Archives Commission for placement in the state archives; and be it further

RESOLVED, That the Texas secretary of state forward copies of this resolution to the archivist of the United States at the National Archives and Records Administration, to the vice-president of the United States and speaker of the United States House of Representatives with a request that this resolution be officially entered in the *Congressional Record*, and to all members of the Texas delegation to the United States Congress, as an official request to the federal government by the 74th Legislature of the State of Texas; and, be it further

RESOLVED, That if and when such replicas are received from the National Archives and Records Administration, the Texas State Library and Archives Commission be hereby directed to place them in the holdings of the state archives to be available for public viewing and photocopying and in all other respects to be treated as any other material worthy of archival storage and retrieval.

# ATTORNEY GENERAL OPINIONS

Here are summaries of Texas Attorney General Opinions relating to the concerns of all types of libraries. Among the topics addressed are public, school and law libraries, public records, the handicapped, employment of librarians, and the Texas State Library. These summaries are quoted verbatim from the Attorney General's opinion document. The full text of opinions, including the question or questions prompting the opinion, may be obtained from the Office of the Attorney General, Box 12548, Austin, Texas 78711-2548.

Opinions are listed in chronological order, with the year of issuance in parentheses. Opinion numbers are shown together with the initials or first letter of the name of the attorney general issuing the opinion. Opinions beginning with the letters "ORD" refer to "open records decision," which are numbered sequentially without reference to a specific attorney general. "LO" opinions are letter opinions and have the same force as a more formal Attorney General Opinion.

**Authority of Opinions**

The weight and authority of Attorney General Opinions in law is a concept which has not been clearly delineated. The following comments may enable the reader to better understand just what these opinions are and how they should be viewed.

The Texas Attorney General is authorized under the Texas Constitution and Texas Government Code to provide upon request legal advise to the Governor, state officials, heads of departments of state government, and local officials on unusual or difficult legal questions, including questions relating to open records. Although the authority of the Attorney General to render opinions is not questioned and those services are regularly requested, the opinions themselves are not binding on the courts. Some courts have given individual opinions great weight and some have rejected them.

The Attorney General acknowledged the limited authority of his own opinions in Attorney General Opinion No. 0-7234-A (1946), where he stated:

> The opinions of the Attorney General have not the force of law and are legally binding on no one. They may be highly persuasive to the courts but apparently only in those cases where they coincide with the court's view of the law.

A leading case expressing the court's views on the authority of Attorney General Opinion states that opinions "while entitled to careful consideration by the courts, and quite generally regarded as highly persuasive, are not binding on the judiciary...." The courts also assessed the status of Attorney General Opinions in light of the Legislature's specific delegation of authority in the Open Records Act, when a Texas Court of Civil Appeals stated:

> Normally, opinions of the Attorney General are persuasive but not controlling on the courts. We consider that great weight should be given such opinions when the legislature has specifically delegated to the Attorney General the duty of interpreting the Act and aiding in its enforcement.

Although the courts have generally ruled that opinions are "advisory in nature," persons who reasonably rely on Attorney General Opinions may be protected from civil and criminal liability, even if the Attorney General has erred in his interpretation. Conversely, the failure to follow the authoritative advice of the Attorney General may be evidence of a lack of good faith.

In summary, Attorney General Opinions are not binding on the courts; however, they are persuasive and the courts may give them great weight. Since the Attorney General is constitutionally and statutorily charged with interpretation of the law upon request by certain persons, reasonable reliance upon an Attorney General Opinion would constitute an affirmative defense to criminal prosecution.

**Exercise Caution**

One should always exercise caution in interpreting and applying opinions. The State Legislature may, for example, pass a law which would render a previously issued opinion inoperable; while more recent opinions may overrule part or all of previous opinions. In addition, opinions are responses to specific, factual situations in point of time, which may or may not be the same as those of the reader. An attorney should be contacted if you seek further advice.

O - 520 (1939)
The provisions of Article 1683 relating to certificates of qualification, apply only to those who have received county librarians' certificates prior to the passage of the amendment of such Article.

O - 690 (1939)
The Commissioners Court is without authority to make appropriations of public money to any library controlled and operated by private individuals however worthy the cause may be.

O - 696 (1939)
The Commissioners Court is not authorized to pay for library books purchased under the provisions of Articles 1677-1696, inclusive, out of the public building and improvement funds.

O - 1316 (1939)
The Commissioners Court of Galveston County may contract with the Rosenberg library for library privileges in the manner prescribed by Article 1694 provided there are no restrictions in the will of Mr. Henry Rosenberg prohibiting the same.

O - 1636 (1939)
When an incorporated city does not have and never had a public free library, the inhabitants of such city who are residents of the county have the privileges of using the county library under Articles 1678 and 1688, and the property within the corporate limits of such city is included in computing the amounts to be set aside out of the county general tax fund for the maintenance of the county free library system.

It is not necessary, under Articles 1677-1696, for an incorporated city which does not have and has never had a public free library to contract with the county for participation in the county free library system or to make cash contributions for such participation before the inhabitants can enjoy the benefits of the system.

O - 2538 (1940)
As the tax levy for county purposes cannot exceed twenty-five cents on the one hundred dollar valuation, if Llano County should levy five cents for a county library, said amount would come from the twenty-five cent levy allowed for the general fund of the county, which would leave twenty cents on the one hundred dollar valuation for the general fund.

O - 2744 (1940)
The Commissioners Court has no authority to appoint a county librarian who does not have a certificate from the State Board of Examiners; but should such an ineligible person be appointed, he would not legally be entitled to the salary attached to said office. Furthermore, where there is no qualified county librarian in charge of the county free library, the Commissioners Court has no authority to appoint an assistant librarian to serve in the capacity of county librarian.

O - 3055 (1941)
The Commissioners Court has authority to expend funds in establishing, maintaining, and operating a "book-mobile library" as a branch or subdivision of an established county free library located at the county seat.

O - 3409 (1941)
As members of the Texas State Library are not employed, either directly or indirectly, in any public school, college, or university, such members do not come within the provisions of the Teacher Retirement Act, and said act cannot be amended to extend to such persons.

O - 3890 (1941)
The costs incurred in the purchase or establishment or a "bookmobile library," as discussed in Opinion No. O-3055, and the expenses incurred in maintaining and operating the same cannot be paid out of the permanent improvement fund, but must be paid out of the general fund of the county.

O - 3956 (1941)
Under the provisions of H.B. 1080, Acts 1941, 47th Leg., the Commissioners Court is given broad powers in establishing and maintaining a law library and if in their discretion it is necessary, they are authorized to hire a librarian to be compensated out of the "County Law Library Fund."

0 - 3957 (1941)
Under the terms of H.B. 1080, Acts 1941, 47th Leg., probate matters are to be considered among the cases on which the sum of one dollar shall be taxed as cost for the establishment and maintenance of a County Law Library. (Assuming, of course, that the Commissioners Court has first entered its order for that purpose.)

O - 4439 (1942)
Article 1702d is unconstitutional. Therefore, the question must be answered in the negative, and Nueces County may not legally collect the fee of $1.00 in each civil and criminal

case and deposit it to the County Law Library Fund to be used in the manner provided for in Article 1702d.

O - 5347 (1943)
Finding no authority and law for the expenditure in question, it is the opinion of this department that the Commissioners Court is not authorized to expend county funds for the purchase of the Annual Pocket Parts to Vernon's Annotated Civil Statutes as a necessary expense in the proper and legal conduct of the office of district clerk.

O - 5511 (1943)
The district and county clerks of Navarro County can not legitimately tax as costs in criminal and civil cases a One Dollar ($1.00) library fee as provided for in Article 1702b-2, supra.

O - 5688 (1943)
Any one of the Courts of Civil Appeals can expend for books for its library during each of the next two biennial years the sum of $500.00, together with any portion of the $500.00 appropriated for "equipment, maintenance and contingent items" not used for said purposes.

O - 5842 (1944)
A special tax cannot be voted by the people of a county for the original or additional county library support. A constitutional amendment would be required to authorize the assessment of a tax for library purposes where the said tax would be additional to the twenty-five cents per hundred dollars valuation.

O - 6094 (1944)
The Commissioners Court may contract for library privileges from some already established library upon its own initiative and without a petition of the majority of the voters of the county.

O - 6243 (1944)
This opinion concerns the authority of the Commissioners Court to enter into contracts with three libraries in Gregg County operated by three incorporated cities providing for the payment of an agreed sum from county funds for the partial support of said libraries.

O - 6441 (1945)
The Commissioners Court may construct a branch library building and pay for same out of the Permanent Improvement Fund. The amount that can be used in such construction is within the discretion of the Commissioners Court but is subject to the provisions of the county budget.

O - 7118 (1946)
A county cannot issue bonds for the purpose of erecting a building to house a free county library.

If the Legislature had authorized the issuance of bonds for the erection of the building to house a county library, same would have to be paid out of the constitutional fund commonly known as the Permanent Improvement Fund. There is no other county fund out of which this type improvement could legally be financed.

O - 7319 (1946)
The County Commissioners Court has the authority to issue Time Warrants for certain permanent improvements, including county park improvements and county airport, but not a library and museum building or a youth center.

O - 7539 (1946)
The Commissioners Court of Bexar County may establish a county law library under the provisions of Articles 1697-1702; Article 1702a-1, which applies to counties having five or more District Courts, is not an exclusive method to establish a county law library for Bexar county, but may only be used upon a proper order of the Commissioners Court.

The establishment and maintenance of the county law library must be paid out of monies appropriated by the Commissioners Court from the general fund as provided by Article 1698.

V - 397 (1947)
It is the statutory duty of the Commissioners Court to operate the county library, and this duty may not lawfully be delegated to any citizens committee or board. The operation of such library is regulated by statute, and local rules of such board are without authority of law.

V - 435 (1947)
The State Treasury Department is authorized to have photographic reproductions of its records prepared, defraying the cost of this work from the contingent expense appropriation of the State Treasury Department.

The State Treasury Department is not authorized to destroy its original records following their photographic reproductions, but it is authorized to transfer the records which have been replaced by photographic reproductions to the State Librarian. The State Librarian is authorized to destroy or further transfer such records.

V - 953 (1949)
A county cannot donate public money to an incorporated public free library. The county is authorized to contract for library privileges from an already established library and pay for the same out of the General Fund of the county.

V - 1071 (1950)
Regarding types of proceedings subject to the County Law Library fee assessed in civil cases: guardianships and other cases in probate court, insanity, and restoration proceedings are civil cases within the meaning of Article 1702e....

A habeas corpus proceeding may be either a criminal case or a civil case depending on the facts of each instance. If in the proceeding it appears that the restraint is not because of some supposed violation of criminal law, then the proceeding must be classed as a civil case.

W - 181 (1957)
Under certain assumptions, the Commissioners Court has the authority to purchase a law library from the legal representative of a deceased District Judge.

WW - 950 (1960)
The Legislature in Article 678m-2, expressed its intention that the Building referred to above should be known as the "State Archives and Library Building" but did not require that such title should be put in permanent form on that Building.

WW - 1423 (1962)
The properties owned by the El Paso County Medical Society furnished by it voluntarily to the public as a public library, but to which the public has access only at the sufferance of the Society as its invitees, are not exempt from ad valorem taxes as a public library under article 7150, subd. 8, as "public property used for public purposes" within contemplation of Article VIII, Sec. 2 of the Texas Constitution.

WW - 1456 (1962)
Section 3, Article 5441a, does not authorize the destruction of newspapers in print, purchased pursuant to Section 3, Article 5441, even though a microfilm copy of the newspaper is to be preserved and even if the consent of the State Auditor to the destruction of the newspapers is obtained, unless such newspapers are adjudged to be valueless.

Article 5441b authorizes the destruction of the newspapers which are over 10 years old, if the procedures of the statute are complied with.
WW - 1494 (1962)
Article 1678, applies to the whole of Hood County, there being no free public library in any incorporated area in the said county.

A petition for the establishment of a county free library may be signed by any qualified voter, and a sufficient petition makes it incumbent upon the commissioners court to establish such a library as soon after its presentation as may be practicable.

Article 1679, authorizes the Commissioners Court to set aside tax funds to maintain a county free library, and the statute vests discretion in the said court as to the amount set aside.

C - 673 (1966)
Subject to the approval of a new or revised State Plan allowing direct monetary grants to local public library units, the Texas State Library and Historical Commission may make direct monetary grants to local public library units under Title I of the Library Services and Construction Act of 1964, Public Law 88-269, as amended.

M - 828 (1971)
Pursuant to Article 6144g, the Texas Fine Arts Commission may publish a newsletter in which is printed the entire text of a pending Senate bill relating to the fine arts, and solicit the comments of the newsletter's readers on such bill.

However, the Commission may not comment that the bill is supported by certain interest groups, the Commission's Chairman may not give his personal opinion regarding the merits, if any, of the bill, and a list of members of the House and the Senate may not be printed in the newsletter.

M - 1114 (1972)
It is our opinion that Article 1137r, Vernon's Penal Code (prohibiting the reproduction for sale of sound recordings without the original owner's consent), is valid and is not in conflict with Article I, Sec. 8, Cl. 8, United States Constitution, or the Copyright Clause, and the implementing federal statutes, 17 USC §§1-215, the Copyright Act.

M - 1173 (1972)
The State matching contributions for O.A.S.I. and employee's retirement contributions for employees of the State Law Library required to be matched by the provisions of Section 3 of Article V of the current General Appropriation Act may be transferred into the State Law Library fund, because such deductions and matching contributions constitute a cost of maintaining, operating and keeping up to date the State Law Library. *[Note: this Opinion has been overruled by Opinion H-947 where they conflict]*

M - 1199 (1972)
Forty-five riders contained in the 1971 General Appropriation Act are considered and passed upon as to validity. See this Opinion for specific riders.

H - 91 (1973)
Under the authority of Article 1696a, county commissioners may hold a bond election for the purpose not only of building buildings but also for acquiring books for library purposes.

H - 140 (1973)
The Library and Historical Commission may, under the Library Systems Act, enter into contracts with the governing bodies of major resource centers, if necessary to establish and develop a network of library systems to serve collectively the entire population of the state. If the operation and maintenance of a communications "service" by the Commission meets such criteria, the contracting libraries may pay for the service with funds appropriated for grants-in-aid.

H - 353 (1974)
The Department of Public Welfare may contract with the Texas Library and Historical Commission for the storage and preservation of the file.

H - 467 (1974)
A city's library board which acts solely in an advisory capacity and has no rule-making or quasi-judicial power is not required to comply with the mandates of the Open Meetings Act regarding public notice and open meetings.

H - 550 (1975)
The Texas State Library need not obtain the consent of the Systems Division of the State Auditor's Office in order to purchase a computer, but it must comply with subsection (a) of article V, section 37 of the General Appropriations Act before making the expenditure. The Library has fully complied with the provisions of Article V, section 37 as soon as the Governor has made the requisite determination pursuant to subsection (a), since subsection (b) therein is invalid. The rider to the Library and Historical Commission appropriation does not apply to funds received by the Texas State Library which are solely federal in origin.

ORD - 100 (1975)
Information which would reveal the identity of a library patron in connection with the object of his or her attention is exempted from disclosure by section 3(a)(1) as information deemed confidential by constitutional law.
However, we do not believe that this constitutional protection extends beyond the identification of an individual patron with the object of his or her attention. Thus, we do not believe the fact that a person has used the library, owes or has paid a fine is confidential information.

H - 689 (1975)
System operation grants and incentive grants can be awarded to community libraries where the proper, prerequisite circumstances exist.

H - 690 (1975)
The Library and Historical Commission may reject the initial and any subsequent annual plan submitted by a major resource center.

When there has been a rejection of a submitted plan, the Commission may revoke the library's status as a major resource center or withhold funds from the library until the plan is acceptably redrawn.

Libraries lying within a system where the plan by the major resource center is rejected, may receive direct grants from the Commission or may be transferred to other systems or a new major resource center may be designated.

H - 725 (1975)
The county law library fee provided by Article 1702i may be taxed as costs, within the meaning of Article 1702i, in all probate proceedings except an action brought for the purpose of confining a person of unsound mind or a habitual drunkard.

H - 907 (1976)
Article 6574b, V.T.C.S., has no application to records in the custody of the county clerk or clerk of a county court, and does not bar transfer of those records to regional historical resource depositories as authorized by article 5442b, V.T.C.S. Regional historical resource depositories have no legal obligation to return court records to the clerk of the original court or other courts for the use of private attorneys, absent a court order requiring the return of such records, so long as microfilm records of the documents sought are available from the clerk of the originating court.

H - 917 (1976)
Non-current personnel files transferred to the State Archives for permanent preservation retain the same status as they had before transfer under the Texas Open Records Act, Article 6252-17a and are public except insofar as disclosure would constitute a clearly unwarranted invasion of personal privacy. The right of privacy is personal to the individual and lapses upon his death, rendering his personnel file public except insofar as its disclosure would constitute a clearly unwarranted invasion of the personal privacy of living individuals.

H - 1041 (1977)
State agencies may not refuse to employ a qualified handicapped person on the basis of his handicap. A handicapped employee who utilizes a private automobile

and driver on state business is limited to sixteen cents per mile reimbursement. State agencies do not presently have authority to develop a special system of reimbursement for travel by handicapped employees; under current law the system is provided by the Comptroller under Article 6823a and the General Appropriations Acts.

H - 1062 (1977)
The County Law Library Fund established by Article 1702h may not be used for the construction or general renovation of a county law library building.

H - 1246 (1978)
A county may maintain branches of its law library in various locations within the county for the convenience of litigants, and may loan law library materials to other libraries servicing such litigants, so long as a complete law library is operated in a place at the county seat convenient and accessible to the judges of the county as well as to litigants.

H - 1305 (1978)
Professional librarians at the University of Texas, as state employees are entitled only to the vacation leave and holidays provided by the Appropriations Act.

MW - 9 (1979)
Under Article 1792h, the County Law Library Fund may be expended only for library purposes and for the needs of judges and litigants. The fund may not be used to buy books [already] owned by the county [which had been purchased with general funds].

MW - 163 (1980)
The Secretary of State should as a general matter charge the fees set by statute for furnishing copies of documents in this office rather than using the fee schedule prepared by the Board of Control pursuant to the Open Records Act. Article 3913, V.T.C.S., establishes the fees for certified copies of documents. [Refer to Opinion for other comments.]

MW - 211 (1980)
Article 5441d, V.T.C.S., requires the Records Preservation Officer described therein to store at least one copy or "preservation duplicate" of any record determined to be "essential" by the originating agency.

ORD - 259 (1980)
It is therefore our decision that the city of Port Neches need not disclose a pledge agreement relating to a gift from a private donor until the entire amount of the gift is paid, or not later than February 1, 1981. When full payment has been tendered, the city should disclose the requested information.

MW - 323 (1981)
Article V, section 4 of the current General Appropriations Act does not prohibit an agency from publishing, in its monthly newsletter, stories which contain neutral, factual reports of the formal votes of members of the legislature and/or verbal comments which may be made by legislators in open forum. As a general rule, article V, section 5 does not prohibit an agency from publishing the name(s) of agency officials or employees in its newsletter for attribution or to facilitate the reader's understanding of a story. That section does embrace the use of legislators' names in print. Article V, section 66(c) applies to units of government which publish periodicals on a monthly basis.

MW - 399 (1981)
Dallas County Law Library funds may be used to implement a computer information system.

JM - 33 (1983)
The legislature may not, consistent with article I, sections 3a and 4, of the Texas Constitution, require consideration to be given to matters of sex, race, color, creed, or national origin in making appointments to the State Library and Archives Commission, but is not prohibited from requiring that consideration be given to geographical distribution.

JM - 183 (1984)
An advisory council to a major resource system of libraries is not a "governmental body" for purposes of the Open Meetings Act, and is therefore not subject to its provisions.

JM - 229 (1984)
Exceptions 3(a)(1) and 3(a)(2) of the Texas Open Records Act, article 6252-17a, V.T.C.S., apply to some of the information found in the medical records of the personnel files of the Texas National Guard for the years 1903-1913. Absent express or necessarily implied authority to open confidential information to the public, a custodian of public records may not adopt a policy in contravention of a third party's right of privacy. Nevertheless, the custodian may, after a significant number of years, reasonably presume that the privacy interest protected by sections 3(a)(1) and 3(a)(2) has lapsed because of the death of the protected person. The confidentiality accorded to information in medical records by section 5.08 of article 4495b in connection with the statutory law aspect of section 3(a)(1) does not lapse upon the death of the protected person. Unless required by other law to retain them, a custodian of public records has discretion over whether to preserve non-current records of the sort in question.

JM - 252 (1984)
Article 5436a, V.T.C.S., does not authorize the State Library and Archives Commission to make cash grants to county and municipal libraries exclusively from general revenue funds.

JM - 256 (1984)
Article 5435, V.T.C.S., does not authorize the Texas State Library and Archives Commission to transfer federal funds to state eleemosynary institutions for library services.

JM - 725 (1987)
A county officer, department or institution may purchase its own supplies subject to the limitations imposed by section 3 of article 2368a.5, V.T.C.S., and subject to commissioners court approval. Before a county may purchase one or more items under a contract that will require an expenditure exceeding $5,000, the commissioners court must comply with the competitive bidding requirements of this act. The $5,000 limitation applies to purchases by the county from the same supplier. Section 3 prohibits the intentional circumvention of the $5,000 limitation by separate, sequential and/or component purchases by the same county officers, departments, or institutions.

JM - 921 (1988)
Regional library systems established pursuant to the Library Systems Act may have as members only public libraries as defined in section 441.122(9), (12) of the Government Code. Regional library systems may contract with non-public libraries for the purchase or sale of specialized resources and services. Gov't Code, §441.128(d).

ORD - 489 (1988)
Section 3(a)(1) of the Texas Open Records Act, article 6252-17a, V.T.C.S., does not protect from required disclosure the Texas Department of Highways and Public Transportation's Texas Highways magazine subscriber mailing list, either for recipients or for non-recipients. No statute expressly authorizes the department to charge more for its subscriber list than the "actual costs" authorized in section 9 of the Open Records Act.

JM - 1013 (1989)
Records created or received by the governor's office in carrying out its statutory duties fall within the definition of "public records" in section 441.031(5) of the Texas Government Code and the definition of "public records" in section 2(2) of the Texas Open Records Act, article 6252-17a, V.T.C.S.

Such records also constitute "governmental records" within the meaning of sections 37.01(1)(A) and 37.10(a)(3) of the Texas Penal Code. Section 37.10(a)(3) prohibits, among other things, the intentional, unauthorized removal of governmental records. Whether the removal of specific gubernatorial records from the custody of the state at the end of a gubernatorial administration violates section 37.10 depends on proof of the elements of the criminal offense described in section 37.10.

Similarly, violation of section 12 of the Open Records Act, which prohibits the unauthorized removal of public records, depends on the facts in a given case.

Section 441.002(g)(8) of the Government Code authorizes the Texas State Library and Archives Commission to demand physical custody of public records that a state official has determined are not in current use. Section 441.002(i) provides that the attorney general shall resolve disputes regarding the proper custody of records subject to section 441.002(g)(8).

JM - 1095 (1989)
It was within the power of the City of Seguin and the County of Guadalupe in 1975 to revise and ratify a pre-existing 1964 agreement between them regarding library services. Even if the original 1964 agreement between them was originally invalid as ultra vires, ratification in 1975 was effective because the Interlocal Cooperation Act authorizing such agreements had become law. After such ratification, the agreement was not subject to unilateral rescission and cancellation by the county.

ORD - 590 (1991)
Information identifying donors or pledgors, and amounts of donations and pledges, including outstanding pledges, to a public university is not within an exception to the Texas Open Records Act.

DM-40 (1991)
As federal law does not authorize the EEOC to require that records be sealed, neither does it authorize the EEOC to require the deletion of information from personnel files in contravention of state law.

The Open Records Act, §5, and the Government Code, §441.035(e), which provide for the destruction of certain state records upon application to the director and the librarian of the State Archives and Library Commission, may provide a mechanism for deletion of certain records in compliance with state law while permitting the inclusion of record expungement as a remedy in voluntary EEOC settlements.

DM - 67 (1991)
...Any funds the sheriff receives that are attributable to the operation of the commissary are to be used for the benefit of inmates in accordance with Sec. 351.0415....

DM - 69 (1991)
The City of El Paso may refuse to issue a building permit or certificate of occupancy to the El Paso Independent School District for failing to comply with municipal building code requirements on handicapped accessibility, notwithstanding the fact that the school district is in compliance with the accessibility standards and specifications adopted pursuant to State Purchasing and General Services Act, Article 7, Texas Civil Statutes, Article 601b, or has obtained a waiver from such compliance under that Act, §7.02(e).

ORD - 600 (1992)
The Open Records Act, §3(a)(17)(B), adopted by House Bill 729 of the 72nd Legislative Session and effective May 8, 1991, excepts from disclosure the home addresses, home telephone number, or social security numbers of employees of the Texas Department of Criminal Justice.... The result of a personality test given...to an employee is excepted from public disclosure.... The score on an intelligence test given to an employee is excepted from public disclosure.... The W-4 forms...are excepted from disclosure.... TexFlex forms...are excepted from public disclosure.... Forms authorizing the direct deposit of the employee's paycheck...are excepted from disclosure. *[Please refer to the decision for additional topics covered.]*

DM - 88 (1992)
Texas Civil Statutes, Article 601f, a statute pertaining to the payment of goods and services contracted for by state agencies and political subdivisions, applies to construction contracts.

LO - 92-7 (1992)
The "records management and preservation" fee established by Senate Bill 770, Acts 1991, 72nd Legislature, Chapter 587, at 2104, may be collected by the county clerk at his discretion. Any fees collected should be deposited with the county treasurer in a separate account, which is subject to audit. The commissioners court is responsible for allocating county funds, but it may expend funds collected under the "records management and preservation" fee only "for specific records management and automation projects."

DM - 139 (1992)
A justice of the peace may maintain the criminal docket in the justice court electronically in addition to or in lieu of printed paper media....

ORD - 606 (1992)
The Open Records Act, Texas Civil Statutes, Article 6252-17a, requires a governmental body to release to a requestor a copy of the actual requested record, with any confidential or nondisclosable information excised. Unless the parties agree otherwise, the act does not permit a governmental body to provide a requestor with a newly generated document on which only the disclosable information has been consolidated and retyped.

LO - 92-77 (1993)
The "records management and preservation fee" imposed by the Local Government Code, §118.011(b) may be used only for those "records management and preservation" projects performed in the office of the county clerk. If the records management and preservation fee is imposed upon any documents filed in the county clerk's office, it must be imposed on all of them. The county clerk may not impose the fee on certain documents while exempting its collection on others. The county clerk may not impose differing amounts on different documents.

DM - 183 (1993)
...the commissioners court is authorized to regulate smoking within and on county property.

LO - 93-43 (1993)
Under the Local Government Code, Chapter 323, subchapter B, it is permissible for a county to use the county law library fund to purchase statutes and reporters to be located in the chambers of district and county courts and thereafter maintain them, provided that the materials are convenient and readily accessible to litigants. If the materials were purchased with general funds of the county, the county law library fund cannot be used to maintain them unless the commissioners court transfers the materials to the county law library collection.. It is for the commissioners court to decide in its discretion whether to use the county law library fund for this purpose.

LO - 94-22 (1994)
A city council may enact a municipal ordinance making the failure to return overdue library books a class C misdemeanor, punishable by a fine of up to $200.

LO - 94-42 (1994)
...The Local Government Code, §323.023(a), authorizes a clerk to collect a charge for the law library fund in civil cases filed in probate court if the commissioners court has set such a charge.

LO - 95-077 (1995)
The Texas State Library and Archives Commission is not authorized by the Government Code, §441.009, or any other federal or state statute or regulation, to deny a federally funded Major Urban Resource Library grant to a municipal library merely because the library has failed to provide library services to nonresidents in compliance with commission's grant guidelines.

DM - 394 (1996)

The City of College Station may, without violating article III, section 52 of the Texas Constitution, spend public funds on the George Bush Library to be established by Texas A&M University only if there is a city purpose for the expenditure, if the city receives adequate consideration for the expenditure, and if sufficient controls are attached to the transaction to ensure that the public purpose will be carried out. Hotel-motel occupancy taxes raised by the city under chapter 351 of the Tax Code may be spent only for the purposes expressly set out in section 351.101 of the code. No showing has been made that the tax funds proposed for allocation to the George Bush Library will be used for any purpose stated in section 351.101.